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FEBRUARY MEETING

THE stated meeting was held on Thursday, the 9th instant, at three o'clock, P. M.; the first Vice-President, in the absence of the President, in the chair.

The record of the last meeting was read and approved; and the Librarian read the list of donors to the Library during the last month.

The Corresponding Secretary reported that letters accepting their election had been received from Henry Herbert Edes, as a Resident Member, and from Samuel Verplanck Hoffman, as a Corresponding Member.

The Cabinet-Keeper reported the gift, by Mrs. Francis B. Davis, of Plymouth, of three silver badges of Harvard College clubs, the Hasty Pudding Club, the Porcellian Club, and the M[onks] O[f] F[lagon], which were the property of the late William Nye Davis, of the Class of 1851, grandson of John Davis, a former president of this Society.

Dr. DE NORMANDIE submitted a memoir of Edward J. Young; Professor HAYNES, one of E. Winchester Donald; and the Editor, for Franklin B. Dexter, a Corresponding Member, one of Morton Dexter.

The EDITOR announced a gift from the PRESIDENT of ten interleaved almanacs, 1728-1778, belonging to Rev. William Smith, of Weymouth, and one, 1765, belonging to Dr. Cotton Tufts. These almanacs are in continuation of the twelve issues given by Mr. Adams to the Society in March, 1909, and printed in June of that year.¹ The series thus comprises twenty almanacs of Rev. Mr. Smith and three of Dr. Cotton Tufts. The years covered in this second gift of the Smith almanacs are, 1728, 1759, 1761, 1762, 1765, 1766, 1767, 1771, 1777 and 1778. Also a gift of manuscripts by Mr. Henry Howell Williams Sigourney, of Milton. They relate to claims for damages to the property of Henry Howell Williams on Noddle's Island by

¹ *Proceedings*, XLII. 171, 444.

the Provincial troops in May, 1775, and contain papers signed by Generals Ward and Putnam, Colonel Burbeck, William Tudor, Moses Gill and others.

Mr. CHANNING read the following paper:

COMMERCE DURING THE REVOLUTIONARY EPOCH.

From a strictly military point of view the futility of the Revolution is easily apparent. On either side there were brilliant feats of arms, as the surprise at Trenton, the assault on Stony Point, and the concentration of the allied forces at Yorktown; some of Greene's operations in the South also are deserving of military remembrance. On the British side Sir William Howe's flank march in the Long Island campaign was planned and executed in a manner entirely worthy of him who seventeen years before had led the advance up the cliffs of the St. Lawrence to the capture of the guard at the head of the path that led from Wolfe's Cove toward the Plains of Abraham. The conception of the campaign against Philadelphia was bold in design and the operations at Brandywine were broadly conceived and well carried out. Ordinarily the Revolutionary War was conducted with torpor by both parties to it. Washington is occupied in writing letters to Congress, striving to gain soldiers, equipment and food. Every winter sees his army reduced to the dimensions of a bodyguard and held immovable in camp by its necessities. On the British side Howe is constantly delayed by the lack of troops or of essential supplies. The lack of effective transport facilities reduces both commanders to immobility. Washington's soldiers starve in the midst of plenty because there are not enough wagons to transport food to them. Before the war transport from one colony to another, and, indeed, from one part of one colony to another part of it, was almost entirely by water. It took time to provide wheeled vehicles, and draft animals were not plentiful. A comparative study of prices shows how inadequate were the means of distribution, even to the civil population within a radius of forty or fifty miles, and the requirements of thousands of men suddenly assembled in one region were beyond the power of the people to supply. As to the British, the case was even more complicated, for their soldiers had first of all to be

transported from Europe, whence practically all their supplies, except rum, were drawn, and the orders from the home government to the commanders in America had likewise to be carried in the same uncertain mode. Had Howe been able, as he desired, to transport the soldiers at Boston to New York in the autumn of 1775, he might then have occupied enough territory to have procured food for his soldiers, his horses, and the loyalist refugees in America, and thus have saved vast expense to the government and, indeed, have put a different face on the whole movement. The vessels bearing recruits and supplies, which left the Channel in the summer of 1775, were blown off the coast, even to the West Indies, with the exception of one, an ordnance brig, which sailed under the guns of an improvised man-of-war and furnished the army blockading Boston with much needed munitions of war. The lack of these transports condemned Howe to inaction all the autumn and winter of 1775-1776, and compelled him and the Bostonians to feed on pork and beans, not altogether to the benefit of the soldiers' health or the temper of the loyalists. In one year the British government paid £36,956 sterling for thirty-five cargoes of oats shipped for America for the use of the forces there, and £44,217 for the freight of the ships employed in carrying the oats to America, including the "value of the ship *General Murray*, . . . which was captured by the Rebels";¹ or £81,173 sterling for this one article alone. In May, 1777, Lord George Germain signed a despatch to Sir William Howe expressing the hope that his operations about Philadelphia would be terminated in time to enable him to coöperate with Burgoyne. This despatch contained the first hint that Howe was expected to subordinate the operations of the main army to that of a secondary force. It was delivered to him late in July, while he was sailing up the Chesapeake. Three thousand miles of salt water and the gales of the north Atlantic did away with fifty per cent of the excess of Great Britain in population and wealth, as against the Americans.

In Great Britain and America there is observable a most remarkable lack of desire to become professional soldiers.

¹ *An Account of Extraordinary Services incurred, and paid by the Right Honorable Richard Rigby, Paymaster General of his Majesty's Forces* [January, 1781-February, 1782], and not provided for by Parliament, 19, 20, 22.

England could not recruit her armies in Britain, at any rate, not without greatly changing the conditions of pay and service. Gibraltar was garrisoned by Hanoverian troops; regular British regiments were filled up with convicts and paupers, Scottish Highlanders and Lowlanders, Germans and Irishmen, both Catholic and Protestant. A whole army, as armies went in those days, was hired for the war, of German princes who then were customary purveyors of man flesh, trained and equipped for the field, and American loyalists formed another large contingent. In America there is observable a similar dislike to military professionalism. The farmers were willing to embody and march for a short distance; but they demanded their own officers and deserted by the thousands if they were ordered to a distance or kept in employment unduly. It would be interesting to discover how many native-born Americans served in the ranks of the Continental line, but probably this can never be done. For 1781 Parliament voted sixty-three thousand men for the American service. Of these, the eight thousand or so with Cornwallis in Virginia formed the only offensive field force. Their loss at Yorktown might have been supplied from German sources or, perhaps, the Czarina might have proved more complacent in 1782 than she had been in 1775; but there was no money in the British exchequer to pay for new levies. It was necessary to reduce the garrisons on the American seaboard and, indeed, to withdraw them as soon as possible. The weight of France and Spain demanded great expenditures for the defence of Great Britain and Ireland, and also for operations in the West Indies. The aid given by France to America in the form of men and ships was really much less than the assistance she gave in the way of diverting England's strength in money and men to other uses than campaigning on the North American continent. To this general draining of English resources the disorganization of her administrative departments greatly contributed.

The administrative weakness of Congress and the consequent great waste of money are patent to every observer of the Revolutionary conflict. They contributed greatly to the distress of Washington and his soldiers, but were not fatal where so much depended upon the efforts of individual states and of the local levies. Administrative disorganization in England

was now almost at its highest point. Five departments contributed to the carrying on of the conflict. The colonial secretary, with the approval of the king and of the cabinet, directed the general conduct of military and naval operations in America; he was the chief executive of the ship of state for that particular purpose. The details of military organization belonged to the Secretary at War, who, however, except as a member of the cabinet, was not consulted as to such matters as to whether Howe should march north or should march south. The feeding of the soldiers and supplying them with clothing and equipment belonged to the Treasury and was actually managed by one of the secretaries of the Lords of the Treasury. The transport service was partly in the charge of the Treasury and partly in that of the Admiralty, while the supplying of guns and ammunition was given to the Ordnance Board. A genius, like the elder Pitt, could compel all these to work in harmony, but Lord George Germain, whom Providence made Colonial Secretary in November, 1775, was far removed from that category. Corruption and the open and unblushing use of public money for private gain were at its worst in these days. When the king was using these opportunities to buy political support in the two houses of Parliament, it is not to be wondered at that politicians of all parties grasped eagerly at the means of increasing their fortunes and thus providing for their families. Charles James Fox's father had resigned his office of Paymaster of the Forces in 1764; the trustees of his estate in 1780 still retained the public balance that was in his hands, using the interest that arose therefrom for the benefit of his heirs, among whom was the Whig orator. Lord North's private affairs gave him so much concern that the king noticed the gravity of his demeanor, and inquired of John Robinson, the Secretary of the Lords of the Treasury, as to its cause. Upon his replying that the First Lord was disturbed over his private affairs, the king gave him a present of twenty thousand pounds. After reading these anecdotes and fifty more like them, one is prepared for the disagreement between Rodney and Arbuthnot, when the former's unexpected arrival at New York deprived the latter of some thousands of pounds of prize money, and, descending to persons of humbler clay, to read of pigs being kept in the naval storehouses and fed on

ship's biscuit by the store-keepers. Wages and salaries were low in those days compared with the present, but when all possible means of emolument were brought together, the resulting totals might not be so very different. The legitimate expenses of carrying on the war in America, the vast expenditures required for the defence of the British islands, the constant drain on the Exchequer, to provide the king with the sinews of war in his contest with the Whig oligarchy, the wastage due to corruption and what nowadays would be called peculation, and the loss of income due to the stoppage of American trade brought the British Treasury to the verge of depletion in 1781. A few years later the vast expansion in manufacturing gave new sources of taxation; but now every resource seemed to be exhausted. In that year Lord North floated an eight per cent loan by giving a bonus of about twelve per cent and told his royal master that the end was nigh.

While England was becoming financially weaker, year after year, the people of the United States were preserving their economic life and grasping at new sources of wealth. The reader of Washington's letters recalls constant references to the rage of the people for riches and display and to the speculation everywhere apparent. He deploras this, as did many others. The tremendous depreciation of paper money in those years was, no doubt, painful and harassing to many people; but, as Washington points out, if one did not hold the paper for any length of time, the loss in any one transaction was not great. Agriculture, the buying and selling of lands, and general plantation operations went on in Virginia through the war, except in the actual presence of British armies. The outbreak of hostilities put an end to the ordinary course of commerce with Great Britain; but it opened new avenues of trade with the rest of the world. The war also operated in some measure as a protective tariff and compelled the people to embark upon industrial enterprises. Commerce, no doubt, was interfered with, but whatever regular profits were lessened were made good in part by privateering. At the outset, Lord Barrington, Secretary at War, had suggested that no land war should be waged on the American continent, but that the coast should be carefully blockaded. In Edinburgh, in 1776, there was pub-

lished an anonymous pamphlet in which were the following words: "When an effectual stop is put to their export-trade, the boasted power and strength of the rebellious Colonies must soon be annihilated." This was never done. Every year during the war American staples found their way to European markets, even to those of England, and likewise there was a constant current of European manufactures into the United States. Prices for these were greatly advanced, even in hard money; but, on the other hand, the prices of American staples in European markets were likewise advanced. Possibly a study of the tobacco trade will be as good a way of elucidating this point as any.

In the years 1773 to 1775 the average importation of tobacco into Great Britain was ninety-nine million pounds yearly.¹ In the same years the average exportation of tobacco from Great Britain was eighty-three million pounds, leaving a home consumption of sixteen million pounds in each year. In the years 1777 to 1782 the average yearly consumption was five million pounds. Throughout the war tobacco found its way from the American plantation to foreign markets. Under the requirement of the navigation acts all tobacco was taken directly to England or to some other plantation and thence re-exported, but as there could be very little direct trade of any kind between the North American Colonies and the countries of continental Europe, practically the whole crop had been taken to England and thence distributed. Early in the war a contract was entered into with the Farmers General of France, by which they took a large amount of tobacco, for its sale was monopolized in that country by the government; some tobacco, also, was sold in Spain,² although contrary to Spanish law but with the connivance of the government. Some tobacco also went directly to Holland, and thence found its way to Germany and England, but the usual route from the Chesapeake

¹ The figures are deduced from tables in Lord Sheffield's *Observations on the Commerce of the American States* (2d ed., London, 1783), Appendices I, III, and IV, from "Report of Committee of House of Commons on Finance" in *Parliamentary Register*, XXIV., Appendix No. x., and *Reports of Committee of House of Commons*, XI. 48, 53.

² For instance, in 1781 Gardoqui & Sons of Bilboa account to the Cabots of Beverley for 124 hogsheads of tobacco brought by the *Rambler* for 237,567 riales of vellon. *Nathan Dane Manuscripts* in the Society's Collections.

to Europe was by way of St. Eustatia and the other neutral Dutch and Danish West India islands. The requirement of the navigation acts that tobacco should be brought directly from the plantations to England interfered with the importation of it by the way of neutral ports, and Parliament was obliged to pass an act permitting this hitherto unlawful trade. In the winter of 1781-1782, owing to the capture of St. Eustatia and to the closure of the Chesapeake by reason of the siege of Yorktown, tobacco rose to three shillings per pound in England; but within a few months it had fallen to two shillings. Throughout the war considerable quantities of tobacco reached Great Britain through prize ships captured from the Americans.

American, French, and Dutch vessels loaded tobacco from the warehouses on the banks of the great rivers of Virginia and were sometimes captured there. Waiting for a favorable gale from the north and west, the loaded vessel could run down the river and the bay and pass the capes with slight risk of capture, for the same wind that drove her out would drive the watching British cruisers and privateers away, or compel them to anchor in some sheltered nook along the coast. When these watchers became too numerous, the tobacco was taken over land to the Delaware on the north or more often to some North Carolina port to the south, whence it could be carried to sea with slight risk of capture, owing to the peculiar conformation of the northern Carolina coast. Once on the open ocean there was little danger of capture until the port of destination was approached. When Rodney captured St. Eustatia in 1781, he found more than one hundred and twenty-five vessels at anchor in the roadstead, and captured one a day for a full month thereafter. The warehouses of the island were filled with tobacco, rice, and other commodities, awaiting transshipment, and the beach was piled high with casks and hogsheads filled with colonial staples. Robert Beverley declares (February 25, 1782) that the capture of St. Eustatia had seriously interrupted communication between Virginia and England. The course of this trade may be gathered from an entry in the "*Facteur Boëk*" of De Neuville & Son of Amsterdam as to certain shipments from London and Hull to Virginia, Edenton, North Carolina, and Charleston by way of

St. Eustatia. These goods were sent by the *Thetis*, *Resolution*, and *Young Pieter* in 1780. Some of the goods on the *Resolution* were shipped on the account of William Kennedy & Company of London; others were brought from England by Philip Hawkins of Charleston, South Carolina, who was "going passenger on the said vessel." Some of the cargo was on the account of the De Neuilles and had been brought from London and Hull. Robert Beverley, who notes the dislocation of the indirect trade with Great Britain, gives us in his letter book other evidence of the intimate relations that were sustained between one Virginia planter, and possibly others, and people in England. He himself had been educated at Trinity College, Cambridge, and desired his son to have the same advantages. Accordingly, in 1779, he sent him over to England by way of Amsterdam, and directed his bankers in London as to the young man's finances. Beverley does not seem to have been a loyalist; but, on the other hand, he had no interest in the Revolution.

The De Neuville "Facteur Boëk" contains the details of sixteen consignments by as many different vessels. Of these one of the most interesting is the *General Washington*, which was despatched from Amsterdam for Virginia direct, on account of George Mason early in 1781. The details of her cargo fill five pages, but its total value was not large, being only some three or four thousand florins. The articles shipped were typical of a Virginia planter's needs. There were blankets, osnabrigs, earthenware of all kinds, scissors, buttons, muslins, kid gloves, "ribbands," a woman's black silk hat, sewing silk and tape. Then there was good French brandy, seventy-two quart bottles of it, Holland gin, hundreds of empty quart bottles evidently for bottling Madeira or Port in the cellars of Gunston Hall; corks, olive oil, shot, hose, and rope, sugar, pepper, cloves, and tea, broad axes, whetting stones, frying-pans, wool cards and playing cards, and a long list of apothecaries' goods as "rubarbe," corrosive sublimate of mercury and Venice treacle. Altogether the inference is that Mason had made one or more consignments of tobacco to the Amsterdam firm of which we have no memorandum, or had otherwise established his credit with them. This vessel, it will be noticed, sailed directly from Amsterdam for Virginia. At

almost the same time two other vessels, the brig *Alexandria* and the brig *Maryland*, likewise sailed for the Chesapeake.

Among the sixteen vessels despatched by the De Neuilles were some for Philadelphia, but the most interesting of them all were those which were sent to New England, Six of the sixteen sailed for Boston direct; two others sailing for St. Eustatia, but having large consignments of goods on board for Boston. Captain William Haydon commanded the *Hannah*, which sailed in May, 1780, and the *Juno*, which left Amsterdam early in 1781, both bound for Boston. The cargo of the *Juno* was valued at 67,000 florins, that of the *Hannah* at less than half of that amount. Otherwise the two were very similar in character. On the *Hannah* was German steel for Stephen Salisbury and also for Joseph Barrell, the latter taking in addition china ware, earthen pots, house brushes, spices, linens, velvets, writing paper, children's toys (among the rest a furnished kitchen valued at over six florins), wafers, flat-irons, tea and tea-kettles and window-glass. To Thomas Walker was consigned a considerable amount of tea, and Isaac Sears had more tea and linens, and some yards of blue flowered velvet. John Brown, of Hartford, Connecticut, was charged with textiles of one sort or another to the amount of sixteen hundred florins. Jarvis and Russell, of Boston, had on their account fifteen chests of tea and one box of super-Hyson tea, sail cloth and duck, flowered fustian for ladies' petticoats, superfine scarlet broadcloth, buttons, knives, forks and card wire. Paschal and Smith, also at Boston, had red lead, blankets, lace, brocades, calicoes, coach-glasses, window-glass and black pepper. Loring and Austin were charged with consignments of silk mitts, tapes, thread and gauze. Joseph Coolidge had black satin for ladies' gowns, Mrs. Anne Deblois one box Ben-Hyson tea, which was valued at two hundred and ninety-three florins, and the captain had on his own account tea, German steel and window-glass. Among other consignments on New England account may be mentioned two trunks which were received by the De Neuilles from "Mr. George Harlay of London per the *Harmonie*, Roelof Holm master, and reshipped on order and for account of Mr. Christopher Champlin, Merchant in Newport, Rhode Island."

I have found no invoices giving details of consignments from

French ports, but there are many mentions of French vessels in American ports in the Revolutionary newspapers, and in March, 1778, Monsieur Roulhac wrote to Henry Laurens, his letter being dated Charleston, South Carolina, that several ships from his house at Bordeaux are in American ports: one at Charleston, S. C., two at Boston, one at Northampton on the Eastern Shore of Virginia and one at Savannah. There can be no doubt whatever that there was a large private commerce with France in addition to the public and semi-public trade that has been so thoroughly studied in connection with the affairs of Silas Deane and Arthur Lee and of the French Alliance. More interesting, because so much less is known about it, is the evidence of considerable private dealings with Spanish ports.

The part played by Spain and by Spaniards in our Revolutionary struggles has hardly received the place it deserves. The Spanish government contributed liberally toward the fund for the purchase of supplies and munitions of war and individual Spaniards also gave largely. Arthur Lee managed this business for America and did it well, while Joseph Gardoqui and Sons, and especially James Gardoqui, acted as agents for Lee in Spain, not only in disbursing funds, but also in collecting them. They shipped great quantities of supplies from Bilboa. In 1778 there were 18,000 blankets, 11,000 pairs of shoes, 41,000 pairs of stockings, besides quantities of shirtings, tent cloth, duck and medicines, all amounting in that year to nearly 600,000 riales of vellon. Besides transacting this business, the Gardoquis served as agents for American shipping firms. As yet the papers have not been collected to any great extent, but the available material which, as in the other cases, consists partly of items gathered from the newspapers, shows that the private commerce with Spain and with the Spanish West India Islands was extensive and important. In 1779, the *Independent Chronicle* of Boston advertises the sailing of the *Salem Packet* for Bilboa with cargo space for goods outward and homeward. The agent of this vessel was Elias Hasket Derby. A few days later, Richard Derby is trying to get a bill of exchange for one thousand pounds sterling and informs his correspondent that bills "on London will answer as remittances to Gardoqui & Sons." The Cabots of Beverly had had business

transactions with this Spanish firm since 1771. In the years 1777 to 1785 their dealings were quite extensive. These included the disposal of prizes taken by privateers in which the Cabots were interested, as well as more regular commercial dealings. Among the vessels mentioned in the accounts between the Cabots and the Gardoquis, is the *Rambler*. She appears to have been a "letter of marque" rather than a privateer or regular merchant vessel. She made several voyages, one in 1777, another in 1781 and another in 1783. On her homeward trips she carried iron, brandy, blankets, window-glass, gunpowder, cordage, silk handkerchiefs, and tea. Her cargo, including commission and expenses, on the 1781 voyage amounted to 170,726 riales of vellon, and that of 1783 to 383,512 riales. These are merely specimens of goods and accounts which might be considerably extended.

Another way to gain some idea of the extent and course of private commerce during the years of war is to examine the lists of American vessels captured by the British. No complete list can be compiled, but sufficient details can be gathered from the *Remembrancer*, the *London Chronicle* and the manuscript journals of Admiral Lord Howe and Admiral Gambier to confirm the impression that one gets from invoices, letters and diaries. Taking the captures reported by Howe and Gambier in the years 1776 to 1779, we find that five hundred and seventy American vessels in all were taken by ships under their orders, or by privateers fitted out by the loyalists at New York and reporting to Admiral Gambier. Of the five hundred and seventy American merchantmen, one hundred and eleven were bound to or from the West India Islands, twenty-five to or from South Carolina ports, nineteen to and from North Carolina ports, eighteen to and from the Chesapeake, more than fifty to and from the Delaware and about seventy-five to and from New England ports north of Cape Cod. Their cargoes included rum, molasses, sugar, coffee, salt, baled goods, wine, tea, gunpowder, tobacco, rice, and, in general, about the same things that vessels engaged in the same voyages would have carried before the war, with the exception that European manufactures now came either direct or by way of the neutral West India Islands. It is noticeable that some of the New England vessels were laden with tobacco, which

shows that the coastwise commerce was prosecuted during the war, and the taking of vessels from the Bermudians laden with salt gives evidence of the equivocal position of the inhabitants of those islands. While on this subject of captures it would be well to note that American privateers were even more successful in capturing British ships. The cargoes of these prizes supplied American markets with quantities of English goods in much the same way, indeed, that the planters of Jamaica and Barbadoes obtained staves and fish from the North. Besides these transactions which may be regarded as regular, so far as anything is regular in war, there also was an absolutely unmeasurable commerce through the lines with the British at New York. Some of the vessels reported captured had, in all probability, sailed from Philadelphia and other ports with the expectation of landing their cargoes at the mouth of the Hudson. There was also traffic between the people living on the two sides of Long Island Sound. The memorable case of *Holmes v. Walton* arose in New Jersey over the confiscation of silks, and other goods that had come through the lines. The business of running goods from the shores of New York harbor to the interior parts of New Jersey was so extensive that we find evidence of it in the advertisements, as of the stage to Burlington which stated that no "run goods" would be taken.

By whatever means and whatever routes English and foreign goods got into America, they certainly were abundant after the first years of the Revolutionary War. This is well shown by the advertisements in the newspapers of the day. The *Gazette of South Carolina*, published at Charleston, on September 30, 1779, tells us that John Walters Gibbs has for sale "At his store on the Bay" Madeira wine by the dozen, fine Turkey coffee, gold spangled buttons, best razors silver tipped, garden rakes, plane irons, and many other articles. Again, on February 9, 1780, John Blewit offers for sale "at his Store near the Three Legs in King Street" rum, sugar, coffee, duck guns, superfine India chintzes, sweet oil, "Spanish segars with cases for ditto." After the surrender British merchants, who always followed the armies, settled at Charleston, and in the *Royal Gazette*, which was at once published in that town, offered for sale large quantities of English goods; and a con-

siderable quantity of these must have found their way through the lines into the country. The *Maryland Journal and Baltimore Advertiser* in November, 1776, contains the advertisement of Isaac Vanbibber. He offers for sale at Baltimore, gunpowder, claret, cordage, linens, osnabrigs, and many other articles which are described as "just imported" in the schooner *Success*, Captain Hill, and the sloop *James*, Captain Booker. Philadelphia stores were well supplied with foreign goods, except possibly during the few months of the British occupation. The *Pennsylvania Packet*, in 1779, advertises for sale sugar by the hogshead, green tea by the pound, indigo, Russian sheeting, Barcelona handkerchiefs, looking glasses, and ladies' dressing glasses, Madeira, playing cards and corks, thirty kinds of dress fabrics, English and French gold watches, a long line of apothecary's goods, as opium, "camphire," cantharides, vitriol, shellac. Among articles that are described fully are two "very thick plated elegant Table Chafing Dishes of the newest fashion; the only ones of the kind that have ever been imported and offered for sale." One of the advertisers closes his list with the phrase "and a number of articles too tedious to mention," — a confession that would shock the modern professional advertiser.

Crossing the Delaware into New Jersey, the papers contain an even greater assortment of goods. For example, there was Israel Canfield, of Morristown, who advertises in the *New Jersey Journal* a very long list of things from which the following have been taken, ribbons, laces, rattinet, tea, glass, ginger, chocolate, and coffee; and Oudenaard and Reed of the same town offer for sale lawns, white gauze, millinet, janes, moreen, sleeve buttons, women's hair combs, pepper, and indigo. In the same paper Captain Carter, whose store was at the appropriately named place of Bottle Hill, offers for sale, West India rum by the hogshead, Geneva and brandy by the barrel or bottle, and snuff and salt in large or small quantities. In November of the same year William Richards at Trenton advertises for sale aloes, balsam capivi, jalap, opium, and other drugs, "with a complete assortment of patent medicines," also West India goods, English and Dutch scythes, pickled sturgeon, and very fine hair powder. The Boston papers contain numerous offerings. In February, 1778, the *Gazette* con-

tains an advertisement of the cargo of the ship *Marquis de Cassigny*, Monsieur Talman, from Bordeaux. The list is a long one, including window-glass, canvas, Bohea and green tea, drugs and medicines, paper, shoes and soap, almonds, anchovies, claret and brandy, figs, lemons, fruits preserved in brandy and a long list of muslins and other materials for women's clothing. A few days later, one hundred tierces of French rum, forty cases of Geneva, three cases of liquors, two of lavender water, and a quantity of sewing twine, pins, and needles, and two boxes of hats were advertised as "just imported from Martinico."

In picking out articles for enumeration in the foregoing paragraphs, the effort has been made to present a just picture of the importations. It appears that the ending of the navigation system introduced the people to French claret and brandy and to Holland gin, to which they had been strangers for the most part in the old colonial days. The constant presence of tea shows that the tea-drinking habit was more wide-spread in 1775 than has sometimes been supposed. The continued demand for articles that were clearly luxuries is interesting as showing that the purchasing capacity of the people was still extensive. Finally, the advertisements taken in connection with the invoices and lists of captures are convincing proof of the widespread extent and character of the commerce of the Revolutionary epoch.

Mr. BROOKS ADAMS presented a paper developing the history and legal principles involved in the disputes between France and the United States, 1794-1800.

THE CONVENTION OF 1800 WITH FRANCE.

In 1885 Congress passed an act referring the claims of American citizens against the government of the United States, for losses suffered because of French spoliation of American commerce during the last years of the eighteenth century, to the Court of Claims for adjudication. Among other questions which arose in the litigation which followed was the right of resistance to French search by American merchantmen armed under the authority of Congress. This question was argued several times, as the most valuable ships were those which had

been most often put in a condition to defend themselves, the last argument having been made in the case of the schooner *Endeavor*. The present communication is an elaboration of a brief filed in that cause. The facts on which the case rested were as follows:

The schooner *Endeavor*, of which Nathaniel Griffin was master, being an armed vessel carrying a commission issued by the President of the United States under the Act of July 9, 1799, sailed on a return voyage from Demerara on the eleventh of October, 1799, with an innocent cargo, bound for Boston. While pursuing her voyage, on the sixth of November, 1799, at eight o'clock in the morning, the captain sighted the privateer, the *Victor*, manned by about sixty negroes, mulattoes, English and Americans. On the privateer bearing down, he hoisted French national colors and fired one of his bow chasers; he then gave three cheers and fired a second gun. The *Endeavor* fired her stern chaser. After firing the second gun the privateer struck the French national and hoisted the bloody flag, hoisted his square yard and manned it, in order for boarding, and fired a volley of musketry.

Seeing resistance to be useless, the *Endeavor* struck her flag and surrendered. The privateer took possession.

The *Endeavor* was finally condemned by the Tribunal of Commerce and Prizes sitting at Basse-Terre in the island of Guadeloupe, on January 7, 1800, as a prize of war, for the benefit of the captors.

General Washington fought the action of Great Meadows in 1754, and with that battle a revolution began which terminated only with Waterloo in 1815. During those sixty years which comprised the Seven Years' War, the American Revolution, the French Revolution and Napoleonic Wars, Western civilization was reorganized. Possibly no social movement has ever been so momentous, but of this momentous movement, the most momentous phenomenon, by general admission, was the rise of the United States as a nation.

During these two generations the American people experienced many vicissitudes. Even their independence ceased to be precarious only with the signature of the treaty of Ghent in 1814. At times during both the War of the Revolution and that of 1812 their position seemed desperate, but we can now

see that they reached the lowest point of their fortune during the old Confederation, just previous to the first inauguration of General Washington as President. Then Washington began the great work of his life, the organization of this Government. For his success he has enjoyed the credit he deserved. But Washington performed a second, and almost equally important service for his country, which is unrecognized. This service was the establishment of a defensible frontier against the British which made permanent independence possible; for nothing can be more certain than that the union of these States would have been dismembered had the British in 1812 held the commanding positions along the Great Lakes, which they held in 1789. Washington recovered for the United States the famous western posts, Oswego, Detroit, Niagara, Mackinac and the rest, the key to the valleys of the Hudson and the Mississippi, from which the American flank could always be turned and their rear attacked. The price Washington paid for these posts was the abandonment of the French alliance which had been established by the treaties of 1778. He paid this price by accepting the Jay treaty in 1795. In retaliation for this breach of faith the French made reprisals, and Washington's successor compensated the French for the abrogation of their treaties by abandoning to them the claims of the American merchants whom they had robbed.

Of these claims, which were bartered in this manner in 1800, that for the schooner *Endeavor* is one, and the United States Court of Claims has held that, this private property having been thus taken for public use, the United States should make compensation. Moreover, the United States can well afford to make this tardy act of reparation; for, although the treaty of 1800 was once bitterly assailed, I apprehend that no intelligent American who calmly weighs the evidence can now doubt that the United States gained more by the treaty of 1800, at a less price, than by any single negotiation it ever carried through, save only the treaty of alliance with France in 1778, the treaty of peace with Great Britain in 1783, and the treaty of Ghent in 1814.

Indeed, what the United States then gained was almost incalculable. In 1798 the Union stood upon the brink of dissolution. The Kentucky and Virginia resolutions were frank

nullification, and the agitation causing those resolutions was the direct effect of the breach with France. That breach followed upon Washington's acceptance of the Jay treaty, an acceptance forced upon him by the necessity of regaining the posts.

This fierce social agitation ended with the treaty of 1800. The whole country was pacified. Complete tranquillity followed. But the restoration of harmony was only the beginning of benefits. The possession of the western posts enabled us to fight the War of 1812, to win the victories of Lake Erie and Lake Champlain, of Lundy's Lane, of Chippewa and of Fort Erie,—in a word, to make good our frontier. Without those posts no man can reasonably doubt that New England would have been invaded in 1814, and Massachusetts would have seceded.

But if our country has reaped such advantages from the treaty of 1800, it surely owes a debt of gratitude and of honor to the men by whom those advantages were won, and among those men the foremost were the class to whom the owners of the schooner *Endeavor* belonged. Through their courage and energy the President of this remote and feeble republic was enabled to deal on equal terms with Bonaparte, and so to impress the greatest soldier of the age with American prowess that he determined to confide to her a jewel he could no longer himself defend. After defeat in Santo Domingo Napoleon recognized that he could not protect Louisiana against a British attack. Therefore he conveyed Louisiana to the United States in the hope that they might succeed where he must fail. How America acquitted herself of this task at the battle of New Orleans is well known.

It appears to have been assumed that the relations of America toward France during this period from 1796 to 1800 were solely those of a neutral toward a belligerent; and that if America suffered injury from France, it was because France abused her belligerent rights. It is also assumed that nations must either be at war or at peace, and that if America was not at war with France she must have been at peace with France, and therefore had no right to resist the French claim as a belligerent to search for contraband of war in American ships.

Setting aside for the moment the legal limitations of the right

of search, and the manner in which France disregarded these limitations, it is a fundamental misconception of law to assume that nations must be at war or absolutely at peace. There is a perfectly recognized and well established intermediate condition known as a condition of reprisals which is subject to its own code. This condition of reprisals arises when a nation which conceives itself to be wronged by another proceeds to redress its own injuries by seizures. Necessarily, differences arise which lead to armed collisions. The relations between the two States then become equivocal. If war follow, then the declaration of war is held to be a declaration of animus from the outset, and all claims for damages are merged in one general loss by war. If, on the contrary, the reprisals be terminated by a reconciliation, then the peaceful animus relates back, and mutual compensation for loss is provided for.¹

This is the theory of general international law as expounded by Wheaton, who thus described reprisals:

Among the various modes of terminating the differences between nations, by forcible means short of actual war, are the following: . . .

4. By making reprisals upon the persons and things belonging to the offending nation, until a satisfactory reparation is made for the alleged injury. . . .

General reprisals are when a State which has received, or supposes it has received, an injury from another nation, delivers commissions to its officers and subjects to take the persons and property belonging to the other nation, wherever the same may be found. . . .

The effects thus seized are preserved, while there is any hope of obtaining satisfaction or justice. . . . If the two nations upon this ground of quarrel, come to an open rupture, satisfaction is considered as refused from the moment that war is declared, or hostilities commenced; and then, also, the effects seized may be confiscated.²

During the middle ages the condition of reprisals was the rule and perfect peace the exception. There was hardly a remote frontier in Europe on which private war was not incessantly waged.

The border between England and Scotland is an example.

¹ This was the doctrine laid down by Lord Stowell in the *Boedes Lust*, 5 C. Robinson, 233.

² Wheaton, *Elements of International Law*, §§ 290, 291, 292. The *Boedes Lust*, 5 C. Robinson, 246.

Raids, forays, burnings and cattle-stealing went on perpetually. The old ballads are filled with the story of the fighting. "Chevy Chase" is a famous example, where both Percy and Douglas fell.

Of fifteen hundred Englishmen,
Went home but fifty-three;
The rest were slain in Chevy-Chase,
Under the green-wood tree.

To prevent general wars and to give satisfaction to the sufferers from such acts of violence the Wardens of the Marches held a court. At one of these courts, held in 1575, the English Warden, Sir John Forster, declined to prosecute a notorious English felon. Sir John Carmichael, the Scottish Warden, bade him "play fair." Forster retorted, and finally a regular action took place, known as the "Raid of Reidswire," in which the English were defeated and Forster and a large number of border chiefs were taken prisoners.

Here is a case precisely in point. The capture was a capture by reprisal for refusal to execute legal process. It was not war. The English ambassador did not leave Edinburgh. He simply declined to lie in a bed of state which had been prepared until this "odious fact" had been explained. The Regent Morton did hasten to explain to Queen Elizabeth, satisfaction was given and received and the general peace remained unbroken.

The effect on private rights of the passage from a condition of private war or reprisals to a condition of public war was so well recognized in the middle ages that the proclamation of war was a public and solemn ceremonial performed by heralds, and this proclamation regulated rights. According to Wheaton, the latest example of this formality was the declaration of war by France against Spain at Brussels, in 1635, by heralds at arms. After that time the passage from the condition of reprisals to the condition of public war was marked, by common consent, by the cessation of diplomatic intercourse. But as long as two nations abstained from actual war, as the French plenipotentiaries pointed out in the negotiation which led to the treaty of 1800, a *locus penitentie* remained, and if an agreement were reached "it would follow as a necessary consequence . . . that the parties should be reciprocally indemnified for

the injuries mutually sustained during the existence of that misunderstanding." ¹

I need hardly point out that great feats of arms have been performed during these periods of reprisals. Drake's famous cruise in the *Pelican* was made during reprisals.² On his return he gave Elizabeth of the Spanish spoil a diamond cross and a coronet set with splendid emeralds, which her Majesty wore on New Year's Day. Meanwhile, Philip had fomented an insurrection in Ireland. At a later day Drake made his raid on the West Indies and took and ransomed Carthagená.

Every great war was preceded by a period of trouble along the border. Before the Seven Years' War broke out Clive made his memorable defence of Arcot, and Washington fought for the possession of Duquesne. Coming down to our fathers' memory, Jackson made his campaign in Florida during a period of reprisals.

Jackson's campaign in Florida is, perhaps, the most interesting precedent touching reprisals in American history, for, on that occasion, Mr. Monroe's administration declared and enforced the American doctrine. And the American doctrine is only the doctrine of universal international law.

In the War of 1812 the English had violated Spanish neutrality and had carried on hostilities against the United States from Florida as a base. Among other military measures, besides occupying Pensacola and Barrancas, Colonel Nicholls, who commanded the British force, built a fort on the Appalachicola, which he armed and provided, and then, on evacuating the country after the peace, gave the fort, fully supplied, to the Indians to serve as a stronghold. Presently it fell into the hands of refugee blacks, and became a den of brigands with whom Spain could not cope.

Soon border disturbances began in which two Englishmen, a trader named Arbuthnot and one Ambrister mingled, advising and encouraging the Indians. Finally, in 1817, a boat ascending the Appalachicola, with a detachment of thirty men, seven women and four children, was surprised and those on board massacred. It became necessary to protect Georgia.

¹ Note of 23 Thermidor, year 8 [August 11, 1800]. *American State Papers*, Foreign Relations, II. 331.

² Froude, *History of England*, XI. 398. On the subject and examples of reprisals in law and in history, see Moore, *Digest of International Law*, VII. 119; *Encyclopædia Britannica* (Tenth ed.), I. 160.

Jackson was ordered to pacify the country. He marched at once with his usual energy. He crossed the frontier on March 11, 1818, occupied on March 16 the site of the negro fort which had been destroyed, and thence began a pursuit of the enemy. Believing the Indians to be sheltered in St. Mark's, he occupied that Spanish fortress by force. There the Scotch trader Arbuthnot was apprehended. Ambrister afterward was captured under arms.

Jackson tried these two Englishmen by court-martial. They were sentenced to death. Ambrister was shot, but Jackson hanged Arbuthnot to the yard-arm of his own schooner, *Chance*. Subsequently Jackson attacked Pensacola and captured Barrancas after bombardment, making the garrison prisoners.

Meanwhile, Spain and Great Britain, though uneasy, remained at peace with the United States. The law touching Jackson's operations, and the executions which accompanied them, was laid down by John Quincy Adams in his famous despatch to Erving, United States Minister at Madrid, dated November 28, 1818. That despatch ended the controversy and brought about the cession of Florida.

I extract some paragraphs to show its tenor:

"There was a boat that was taken by the Indians, that had in it thirty men, seven women and four small children. There were six of the men got clear, and one woman saved, and all the rest of them got killed. The children were taken by the leg, and their brains dashed out against the boat."¹

Contending with such enemies . . . mercy herself surrenders to retributive justice the lives of their leading warriors taken in arms, and, still more, the lives of foreign white incendiaries, who, disowned by their own Governments, and disowning their own natures, degrade themselves beneath the savage character by voluntarily descending to its level. Is not this the dictate of common sense? Is it not the usage of legitimate warfare? Is it not consonant with the soundest authorities of national law? . . .

It is thus only that the barbarities of Indians can be successfully encountered. It is thus only that the worse than Indian barbarities of European impostors, pretending authority from their Governments, but always disavowed, can be punished and arrested. Great Britain yet engages the alliance and co-operation of savages in war;

¹ Passage from a letter of Peter B. Cook, Arbuthnot's clerk, dated January 19, 1818.

but her Government has invariably disclaimed all countenance or authorization to her subjects to instigate them against us in time of peace. Yet, so it has happened, that, from the period of our established independence to this day, *all* the Indian wars with which we have been afflicted have been distinctly traceable to the instigation of English traders or agents. Always disavowed, yet always felt; more than once detected, but never before punished; two of them, offenders of the deepest dye, after solemn warning to their Government, and individually to one of them, have fallen, *flagrante delicto*, into the hands of an American general; and the punishment inflicted upon them has fixed them on high, as an example awful in its exhibition, but, we trust, auspicious in its results of that which awaits unauthorized pretenders of European agency to stimulate and interpose in wars between the United States and the Indians within their control.

This exposition of the origin, the causes and the character of the war with the Seminole Indians, . . . which necessarily led our troops into Florida, and gave rise to all those incidents of which Mr. Pizzaro so vehemently complains, will, it is hoped, enable you to present other and sounder views of the subject to His Catholic Majesty's Government.

It will enable you to show that the occupation of Pensacola and St. Mark's was occasioned neither by a spirit of hostility to Spain, nor with a view to extort prematurely the province from her possession; that it was rendered necessary by the neglect of Spain to perform her engagements of restraining the Indians from hostilities against the United States, and by the culpable countenance, encouragement, and assistance given to those Indians, in their hostilities, by the Spanish governor and commandant at those places; that the United States have a right to demand, as the President does demand, of Spain, the punishment of those officers for this misconduct; and he further demands of Spain a just and reasonable indemnity to the United States for the heavy and necessary expenses which they have been compelled to incur by the failure of Spain to perform her engagements . . . ¹

¹ *American State Papers*, Foreign Relations, iv. 544. The history of this famous despatch, which embodied a perfect defence of Jackson's acts and was adopted by the President and Cabinet only after a long contest in the Cabinet Councils — Adams standing practically alone at first — is told in Adams, *Memoirs*, iv. 105-173. The subsequent political history of the letter was also important. Jackson refused to acknowledge any indebtedness to Adams for this defence, and attacked him with a bitterness that nothing could temper, for what he wrongly believed to have been Adams's attitude towards him at this time. No better example could be asked of Jackson's unreasoning hatred of men in public life who at any time crossed his path or seemed to oppose his policies. [W. C. F.]

Resistance to foreign attack is of the essence of reprisals, for courts cease, during these intervals, to give relief. It is only when a reconciliation has been effected that the peaceful animus relates back. Then the two nations, in the very words of the French in this controversy, "should be reciprocally indemnified for injuries mutually sustained during the existence of that misunderstanding." And then "it would be just and proper to extinguish even the remembrance of the recriminations which have occurred during the period of their existence."¹

Given the fact of reconciliation, peace has in law prevailed unbroken, and every injury is to be made good. The two nations, and their citizens, are to be restored as they were before. Of course, injuries sustained in conflict, as they are usually the gravest, are those which are the most carefully provided for, especially those suffered by the nations themselves, such as the loss of armed ships. To illustrate this principle, I shall cite Walpole's treaty which he negotiated with Spain in the hope of closing a period of reprisals which had long existed in the West Indies.

The difficulty between England and Spain arose from the effort of Spain to maintain a commercial monopoly in her American colonies. The English merchants found the Spanish trade lucrative, and they were encouraged by the colonists, to whom they sold goods cheaper than did the Spaniards. The two countries had repeatedly tried to regulate the traffic by treaties in 1667, in 1670, and in 1729, besides a convention in 1713, wherein the King of Spain granted the slave trade of the Spanish-American colonies to an English company.

In the treaty of 1729, in particular, it was stipulated that, hostilities having continued since the signature of the preliminaries of peace four years before, the King of Spain would make reparation. To this end a commission was to be established. All these conventions and treaties, however, proved ineffective. The British obtained a limited permission to trade, but the Spaniards accused them of persistent smuggling. To prevent this smuggling the Spaniards established a species of blockade of the coast. To enforce the blockade they searched English ships at sea, as the English alleged, and, under pretence of search for contraband, committed piracies. Actions between

¹ *American State Papers*, Foreign Relations, II. 313.

the Spanish coastguard and the British merchantmen occurred. Letters of marque and reprisal were issued. Under these conditions, war being imminent, Walpole negotiated the convention of the Pardo, which was signed January 14, 1739, wherein Spain agreed, upon a joint account taken, to pay £95,000 in damages.

Ultimately the reconciliation failed; not because of any scruple on the part of Spain in regard to compensating Englishmen for damages sustained while resisting an unreasonable search for contraband, but because the British Parliament insisted upon the renunciation by Spain of the right to search at all.¹ War, therefore, ensued, which was terminated by a treaty of peace in which Spain's claim to search was conceded.

This precedent illustrates the whole doctrine of the right of search for contraband, of an unreasonable exercise of the right of search causing resistance, of that resistance leading to reprisals, and of those reprisals terminating in a treaty wherein the party searching with violence recognized his tort and agreed to make compensation therefor. Finally the adjustment failed because England, the injured nation, demanded the complete renunciation of the right of a foreign power to visit her ships in order to protect its coast, — a pretension which England failed to sustain by arms. Had the convention been successful, all losses incurred by Englishmen, innocent of smuggling, through the violence of Spain, whether they resisted an unlawfully violent search or not, would have been made good. The point to determine in regard to each ship would have been, not whether she resisted a Spanish cruiser giving just cause for fear, but whether the ship in question was a smuggler.

This controversy between England and Spain is extremely apposite to the present discussion, because, after 1796, France did not pretend to search American ships as a belligerent, visiting neutral vessels under certain well established legal limitations and guarantees, for the purpose of restraining the smuggling of contraband of war from the neutral to an enemy; on the contrary she avowedly captured and confiscated them

¹ The war which led to the fall of Walpole's ministry in 1742 was declared in London on October 19, 1739. It was popularly known as the War of Jenkins's Ear, because Captain Jenkins was alleged to have been mutilated by the Spaniards, in the Gulf of Mexico, who searched his ship under pretence of suspecting him of smuggling.

by way of reprisal for national injuries, precisely as the Spanish searched and captured English ships on the high seas by way of reprisal for systematic breach of her revenue laws. The French complained that, through the violation by America of her treaty obligations, France had sustained great injuries; among others, that she was thereby incapacitated from suppressing the insurrection in Santo Domingo, which cost her the island. No doubt France was damnified by American action. For this France demanded compensation. The American Government declined to make compensation. France thereupon indemnified herself out of American commerce, and from the first insisted that she should either be allowed to keep the spoil she had taken, the United States assuming the payment of the losses which American citizens had sustained; or else that America, receiving compensation, should acknowledge her treaty obligations, and assist France in her war against England. The whole issue between the two nations was put in a paragraph by the French commissioners on September 4, 1800.

We shall have the right to carry our prizes into the American ports.

A commission shall regulate the indemnities due by each of the two nations to the citizens of the other.

The indemnities which shall be found due by France to the citizens of the United States shall be discharged by the United States; and, as an equivalent, France makes an abandonment of the exclusive privilege resulting from Articles XVII and XXII of the treaty of commerce, and of the rights of guaranty resulting from the eleventh article of the treaty of alliance.¹

How such a condition of affairs arose will appear upon a recapitulation of the history of the events which led to the negotiation of the Jay treaty. The Jay treaty, as this Court of Claims has held, conflicted with the earlier treaties with France. Hence the French claim to be indemnified for the injuries they suffered from what they alleged to be a breach of national good faith.

From toward the end of the sixteenth century England, France, Spain and Holland became engaged in a furious struggle

¹ *American State Papers*, Foreign Relations, II. 336.

for the control of the great trade route which, having its base in India, centred in Western Europe, and found its terminus in America. As between England and France the prize was the valley of the Mississippi. Before railways, watercourses were the best channels of communication, consequently the rivals fought for the control of the watercourses.

The French very early grasped the geographical problem. In 1608 Champlain founded Quebec, and somewhat later Marquette and La Salle penetrated the depths of the wilderness. By 1750 the forces of Louis XV held the St. Lawrence, the Niagara, the Ottawa, Detroit and the Maumee, Green Bay and Chicago. The French had settled New Orleans in 1718. But whoever holds the line of the Great Lakes, with Oswego, Niagara, Erie, Detroit and Chicago, holds the key to the interior of the United States. From these points an invader commands access to the waters of the Alleghany and the Ohio, the Wabash and the Illinois. Thus the French lay on the flank and rear of the English who occupied the coast, and who were shut off from the West by a range of mountains the outlets of which were held by the enemy.

Following the lines of least resistance, the French, starting from Quebec, passed Niagara and, descending the Alleghany, reached Pittsburg, whence they could command the Ohio. The English, leaving the Chesapeake, ascended the Potomac to Cumberland and, crossing the mountains, descended the nearest river valley to the Ohio. At the point where the two roads converged the hostile columns met, and Washington, at Great Meadows, opened the conflict which ended with Waterloo.

Thus contemplated, the facts of history form a comprehensive unity. The Seven Years' War and the War of the American Revolution together were the cause; the consolidation of the thirteen colonies into a nation the effect. As between France and England fighting in America, victory inclined to him who had the colonies for an ally. In the Seven Years' War the English and the colonists combined, drove the French from Canada. In the War of the American Revolution the colonists, with the aid of the French, expelled the British from the territory which now forms the nucleus of the United States.

The French did not engage in the War of the American Revolution for love of liberty, but to regain what they had

lost in the Seven Years' War. In 1778 Spain, it is true, nominally held Louisiana, it having been ceded by France in 1762, but it was always, in reality, a French possession, and the interests of France and Spain, as against England, were identical. Santo Domingo was also the most valuable asset of the French crown, possibly the most valuable colony in proportion to size which any nation ever owned. By the treaties of 1778 with the United Colonies, France sought to establish a base of operations against Great Britain upon the Western Continent, in the event of future war. By the treaty of alliance, Article XI, the colonists guaranteed to France her possessions in America, while by Article XVII of the treaty of commerce, the United States promised to open her ports to the ships of war of France, with their prizes, and to close them to those who had molested her.

Article XXII of the same treaty practically stipulated that privateers, hostile to either nation, should be deprived of any use of the ports of the other, save so far as to be permitted to buy enough food to carry them to the next port of their own country.

Although in 1783 Great Britain, yielding to exhaustion, acknowledged the independence of the United States, granting such concessions as were necessary to secure peace, there is abundant evidence that she did not act in good faith, and proposed to retain such military positions as would give her victory in another war.

By the treaty of peace of 1783 the boundaries of the United States were fixed, substantially as they are now, along the Canadian frontier, King George contracting to withdraw all his "armies, garrisons and fleets from the United States, and from every port, place and harbor, within the same."

So great was the anxiety to secure a defensible frontier, that a month before the definitive treaty was signed General Washington, in execution of the duty confided to him by Congress, sent General Steuben to arrange with General Haldimand for the occupation of Mackinac, Detroit, Fort Erie, Niagara, Oswego and Point-au-fer and Dutchman's Point, on Lake Champlain.

Haldimand declined to make the surrender,¹ and from that hour Washington never doubted England's malevolent animus.

¹ *American State Papers*, Foreign Relations, I. 225.

On May 10, 1786, he wrote to Lafayette: "The British still occupy our posts to the westward, and will, I am persuaded, continue to do so under one pretence or another, no matter how shallow, as long as they can. Of this . . . I have been convinced since August, 1783. . . . It is indeed evident to me that they had it in contemplation to do this at the time of the treaty."¹

As time elapsed, Washington's anxiety grew intense. After his election to the Presidency, almost his first diplomatic act, before he had a Secretary of State, was to write, with his own hand, to Gouverneur Morris, who then happened to be in London, directing him to ask, informally, for an explanation of the delays which had taken place in regard to the surrender of the posts and to press for an execution of the treaty. Morris replied that nothing could be done; that the French Ambassador, with whom he had talked confidentially, "told me at once, that they would not give up the posts."

Morris was right, as John Adams had been before him, in the opinion that the British would maintain their advantage, and in 1790 Washington became seriously alarmed at the prospect of war between Spain and Great Britain. On August 27 he sent a confidential communication to John Adams, the Vice-President, expressing his opinion that, in the event of hostilities, the British would make an attack on New Orleans by a combined operation from Detroit.

The *consequences* of having so formidable and enterprising a people as the British on both our flanks and rear, with their navy in front, . . . as they regard the security of the Union and its commerce with the West Indies, are too obvious to need enumeration.²

According to John Marshall, Washington had acquired the conviction that the British proposed to establish "a new boundary line, whereby those Lakes should be entirely comprehended in Upper Canada."³

How accurately Washington judged is proved by the demand

¹ *Writings of Washington* (Ford), xi. 28, 29.

² *Works of John Adams*, viii. 497. The same communication was sent to the members of his cabinet and the Chief Justice. All of the replies are printed in Ford, *The United States and Spain in 1790*.

³ Marshall's *Washington* (1st ed.), v. 569.

of the British at Ghent, as a *sine qua non* that the American boundary should be that of the treaty of Greenville.¹ That is to say, they attempted to shut the United States out from the Lakes, just as Washington had predicted. Even while Washington meditated on a possible Spanish war, the Indian outbreak began which ended in St. Clair's defeat, in November, 1791, the most serious reverse the United States ever sustained in any Indian campaign. This war was instigated by Great Britain.

Subsequently the British even marched a detachment fifty miles south from Detroit, and seized and fortified a position on the Maumee, not far from Toledo, and in the midst of the disturbed district. On April 3, 1791, Washington instructed Jefferson to intimate to the Canadian government that they must cease supplying the Indians with material of war: "The notoriety of this assistance has already been such as renders inquiry into particulars unnecessary."² Lord Dorchester explicitly and emphatically denied tampering with the Indians, but twenty-two years afterward the British general, Proctor, was defeated at the battle of the Thames and Proctor's baggage was taken. In 1819 Richard Rush, then minister at London, had occasion to draw Lord Castlereagh's attention to the fact that "the events of the late war which threw the baggage of General Proctor into the hands of the Americans had put the Government of the United States in possession of documents to show that, if not all the Indian wars which President Washington had been compelled to wage, the most formidable of them were instigated and sustained on the side of the Indians by British traders."³

Thus Washington held it to be demonstrated that a second contest with Great Britain would only be a matter of time, and that such a contest could, probably, have only one end, were the British left in command of the Lakes and the north-western posts, which were the key to the interior.

Furthermore, every inference Washington drew was justified by the event. In the War of 1812 the British campaign was that which Washington outlined; an attack from Detroit

¹ *American State Papers*, Foreign Relations, III. 709.

² *Writings of Washington* (Ford), XII. 31; *Writings of Jefferson* (Ford), V. 321.

³ Rush, *Recollections of the English and French Courts*, 344.

and from Niagara, together with an effort to seize the mouth of the Mississippi. That Great Britain failed was due solely to the fact that in 1812 we held the frontier which Washington obtained by the Jay treaty. The Jay treaty enabled us to fight the battles of Chippewa, Lundy's Lane, Fort Erie and the Thames; while Perry's victory on Lake Erie, and Macdonough's at Plattsburg, were made possible because we had access to the Lakes. When Wellington was offered the command in America in 1814, although he would not admit that "all the American armies . . . would beat out of a field of battle the troops that went from Bordeaux last summer," yet Lundy's Lane and Fort Erie made it clear to him that no troops or general would suffice without "a naval superiority on the Lakes."¹

We may therefore take it as demonstrated that the independence and integrity of the American Union turned upon her obtaining possession of her natural frontier, before she was again attacked by Great Britain. Also, it may be taken as demonstrated that in 1791 Washington knew that Great Britain was contemplating an attack, and only waited a favorable moment to strike a blow which should be mortal.

That such a blow was not struck before 1800, and that Washington succeeded in getting possession of the northwestern posts, was probably due to the breaking out of the war with France in 1793, which placed America in a position of advantage. In that war the English soon perceived that if they were really to harass their adversaries they must cut off from France supplies of food and luxuries from parts beyond the sea. The most important colonial supplies of France came from Santo Domingo. This trade was not open to the United States in time of peace, because in the eighteenth century the European colonial policy was a strict monopoly, but when war began the French resorted to the protection of the American neutral flag. Immediately American ships flocked to the French ports and freighted with French colonial merchandise, or merchandise for French colonies. The British waited until this American shipping acquired high values and then issued their famous Orders in Council of November 6, 1793, ordering the capture of all such vessels. Forthwith, numbers of American ships were

¹ Wellington, *Supplementary Despatches*, I. 426.

seized and carried into English ports, where they were condemned under the "Rule of the War of 1756."¹

Meanwhile, on April 22, 1793, Washington had made proclamation of neutrality. According to Mr. Jefferson, "On the day of publication we received, through the channel of the newspapers, the first intimation that Mr. Genêt [the French Minister] had arrived on the 8th of the month at Charleston." Mr. Genêt among other things asked for arms to defend the French Windward Islands. These arms, under Article XI of the treaty of alliance of 1778, the United States was bound to give,² but Mr. Genêt complained on September 18, 1793, just before the seizure of the American ships, "That the Secretary of War, to whom I communicated the wish of our governments of the Windward Islands, to receive promptly some fire-arms and some cannon, which might put into a state of defence possessions guarantied by the United States, had the front to answer me with an ironical carelessness, that the principles established by the President did not permit him to lend us so much as a pistol."³

There remained, however, Sections XVII and XXII of the treaty of commerce, opening the ports of the United States to French ships of war and privateers with their prizes, and excluding from our ports all such as had made prizes of the property of France, or were hostile to France. This, then, was the position in November, 1793: England, lying upon the flank and rear of the United States and inciting the Indians, as Washington well knew, was pressing intolerably with her navy in front; in fact, treating the United States as an ally of France. Therefore, General Washington had to choose whether he would strictly perform our treaty obligations to the French, which would have been tantamount to a war with England; or whether by abandoning France he would obtain the northwestern posts, and a relaxation of the pressure of the English navy.

¹ The instructions issued on November 6, 1793, to British cruisers were as follows: "That they shall stop and detain all ships laden with goods the produce of any colony belonging to France, or carrying provisions or other supplies for the use of any such colony, and shall bring the same, with their cargoes, to legal adjudication in our courts of admiralty." *American State Papers*, Foreign Relations, I. 430. This was, of course, substantial piracy.

² *Gray v. United States*, 21 Court of Claims, 360.

³ *American State Papers*, Foreign Relations, I. 173.

Nor did the situation admit of delay, for, in the autumn of 1793, Great Britain and the United States were in a condition of reprisals. The English seized our ships by force to compensate themselves for our attitude to France, and Washington, in retaliation, proclaimed an embargo. To meet this crisis Washington sent John Jay to London to attempt to negotiate a treaty which should preserve the peace. This Jay did by abandoning the French. In return the British surrendered the posts and paid for the ships they had seized.

The ratification of the Jay treaty was exchanged October 28, 1795. The treaty itself was proclaimed February 29, 1796. It created, when its contents became known, a prodigious fermentation in France. On November 15, 1796, Mr. Adet, the French Minister in the United States, wrote a formal protest to Timothy Pickering, Secretary of State, demanding "the execution of that contract which assured to the United States their existence, and which France regarded as the pledge of the most sacred union between two people, the freest upon earth. . . . What has this negotiation [Jay treaty] produced? A treaty of amity and commerce, which deprives France of all the advantages stipulated in a previous treaty."

Adet went on to protest against the violation of Article XVII of the treaty of commerce of 1778; declared that the Executive Directory considered the Jay treaty as tantamount to a treaty of alliance between the United States and Great Britain; announced that he had received orders to suspend his ministerial functions, though such suspension was not to be regarded as a rupture between France and the United States, "but as a mark of just discontent," to last until the United States should return to measures "conformable to the interests of the alliance." Also, Adet announced "that the Executive Directory had just ordered the vessels of war and privateers of the Republic to treat American vessels in the same manner as they suffer the English to treat them." That was, according to French construction, to seize them.¹

Thus the French began reprisals, in order to indemnify themselves for the loss they suffered by the non-performance by America of its treaties.

¹ *American State Papers*, Foreign Relations, I. 579-583.

It follows that the difficulties which thereupon ensued between America and France had nothing necessarily to do with the war between England and France. They might, and probably would, have ensued had the same bargain been made at any time between Great Britain and the United States. Sooner or later it was almost inevitable that the French alliance would be bartered by the United States against a defensible frontier.

Looking back upon this history from the distance of a century, we must all perceive that the claim of France was, in substance, well founded. In 1778, for very valuable considerations, the United States assumed obligations toward France which were heavy, it is true, but which were none the less binding. In 1794 self-preservation demanded that those obligations should be repudiated; accordingly they were repudiated, but their repudiation gave France a good claim for compensation.

France pretended a nominal willingness to accept compensation in money. In 1798 Talleyrand strongly urged a loan upon the commission composed of Messrs. Pinckney, Marshall and Gerry. John Marshall replied that a loan, or any "act on the part of the American Government, on which one of the belligerent Powers could raise money for immediate use, would be furnishing aid to that Power, and would be taking part in the war. It would be, in fact, to take the only part which, in the existing state of things, America could take. This was our deliberate opinion; and, in addition to it, we considered our instructions as conclusive on this point."¹

In fact, the French would inevitably have pushed their demands until they met with armed resistance. For the purposes of this argument, however, the reasons which prevented General Washington from offering satisfaction at the outset are immaterial. It suffices that the French Government had, as this Court of Claims has held, claims against the United States, whose apparent justness the United States herself recognized as early as July, 1797, "in the instructions to the Pinckney mission."²

On the French side Talleyrand told Gerry that all the Repub-

¹ *American State Papers*, Foreign Relations, II. 187.

² *Gray v. United States*, 21 Court of Claims, 378.

lic of France wished was to be restored to her treaty rights, which "will speedily remove all difficulties."

In truth, the loss to France from the non-execution of these treaties was very sensible. The only hope of France, either to maintain her West Indian possessions or to seriously harass the British mercantile marine, lay in the co-operation of the United States. As the Court of Claims truly observed, "the claims now before us are for spoiliations committed by France to feed her people," whom the English were attempting to starve. Worse still, the success of the insurrection in Santo Domingo can be traced directly to aid given the insurgents by America. In making reprisals, therefore, the French armed cruisers to indemnify themselves from American commerce. They did not arm them to stop smuggling in contraband of war.¹

The problem presented to the American government was extremely difficult. If the United States offered to compensate France in money, England might call her to account for

¹ An enormous mass of evidence exists to prove the truth of my proposition. I content myself, nevertheless, by referring to the report of the Secretary of State on the transactions relating to the United States and France, submitted to Congress on January 21, 1799, from which I extract a single passage. This passage relates to Santo Domingo. After referring to the decree of July 2, 1796, a decree made immediately after the provisions of Jay's treaty became known in France, the Secretary of State continued:

"But without waiting for this decree, the commissioners of the French Government at Saint Domingo began their piracies on the commerce of the United States; and, in February, 1797, wrote to the Minister of Marine (and the extract of the letter appeared in the official journal of the Executive Directory of the 5th of June): 'That, having found no resource in finance, and knowing the unfriendly dispositions of the Americans, and to avoid perishing in distress, they had armed for cruising, and that already eighty-seven cruisers were at sea; and that for three months preceding the administration had subsisted, and individuals been enriched, with the product of those prizes.'

"That the decree of the 2d of July was not known by them until five months afterwards. But (say they) the shocking conduct of the Americans and the *indirect* knowledge of the *intentions* of our Government, made it our duty to order reprisals, even before we had received the official notice of the decree. They felicitate themselves that American vessels were daily taken, and declare that they had learnt, by divers persons from the continent, that the Americans were perfidious, corrupt, the friends of England, and that, therefore, their vessels no longer entered the French ports, unless carried in by force.'"

This action of the Santo Domingo authorities was confirmed by the Government at Paris. Santhonax, the chief of the commissioners, was continued in office, and, going afterwards to France, was received as a member into one of the legislative councils. *American State Papers*, Foreign Relations, II. 234.

aiding her enemy. If she permitted France to pay herself by depredations, there was no limit to which those depredations might not extend. John Adams measured the situation very accurately, and determined to try persuasion first and force later. On May 31, 1797, he nominated Messrs. Pinckney, Dana and Marshall, as a commission of three envoys to France "to dissipate umbrages, to remove prejudices, to rectify errors and adjust all differences, by a treaty between the two Powers."¹ On the arrival of this Commission at Paris, France began an attempt to extort money from the United States by threats of violence.

Talleyrand was a man admirably adapted to such a purpose, for while he could be arrogant as long as arrogance seemed likely to be profitable, he could be wonderfully supple when he found he had gone too far.

Having been ruined by the Revolution, Talleyrand's first anxiety was to restore his own fortune, his second to obtain a loan for his country. He undertook to charge the Commissioners a fee of £55,000 for his services. Furthermore, he demanded a subscription of £1,333,000 to a Dutch 5 per cent loan. At the same time he conveyed to the Americans an intimation through his agents, "that it was worthy the attention of the envoys to consider, whether by so small a sacrifice they would establish a peace with France, or whether they would risk the consequences; that, if nothing could be done by the envoys, arrangements would be made forthwith to ravage the coasts of the United States by frigates from Santo Domingo; that small States, which had offended France, were suffering for it," and more to the same effect.²

The Americans replied:

That America was the only nation upon earth which felt and had exhibited a real friendship for the Republic of France; that among the empires round her which were compelled to bend beneath her power and to obey her commands, there was not one which had voluntarily acknowledged her Government, or manifested for it, spontaneously, any mark of regard. America alone had stepped forward and given the most unequivocal proofs of a pure and sin-

¹ Dana declined, and Gerry was named in his place and accepted the appointment. Adams said his entire cabinet was against Gerry

² *American State Papers*, Foreign Relations, II. 168.

cere friendship, at a time when almost the whole European world . . . were leagued against France; when her situation was, in truth, hazardous . . . America alone stood forward and openly and boldly avowed her enthusiasm in favor of the republic, and her deep and sincere interest in its fate . . . To this distant, unoffending, friendly republic what is the language and the conduct of France? Wherever our property can be found she seizes and takes it from us; unprovoked, she determines to treat us as enemies, and our making no resistance produces no diminution of hostility against us; she abuses and insults our Government, endeavors to weaken it in the estimation of the people, recalls her own minister, refuses to receive ours, and, when extraordinary means are taken to make such explanations as may do away misunderstandings, . . . the envoys who bear these powers are not received; they are not permitted to utter the amicable wishes of their country, but, in the haughty style of a master, they are told that, unless they will pay a sum to which their resources scarcely extend, they may expect the vengeance of France, and, like Venice, be erased from the list of nations; that France will annihilate the only free republic upon earth, and the only nation in the universe which has voluntarily manifested for her a cordial and real friendship. What impression must this make on the mind of America, if without provocation, France was determined to make war upon us, unless we purchased peace? We could not easily believe that even our money would save us; our independence would never cease to give offence, and would always furnish a pretext for fresh demands.”¹

During this address Talleyrand's emissary “manifested the most excessive impatience,” interrupting and demanding a categorical answer to his propositions, “yes or no.”

This interview occurred on October 30. On November 1 the envoys agreed “that we should hold no more indirect intercourse with the Government.”¹

Repeated applications to be received officially having been ignored, the envoys made up their minds that the situation was desperate, and on December 24, 1797, wrote to the Secretary of State:

We have not yet received any answer to our official letter to the Minister of Foreign Affairs, dated the 11th of last month, . . . but reiterated attempts have been made to engage us in negotiation with persons not officially authorized . . . We are all of opinion

¹ *American State Papers*, Foreign Relations, II. 164.

that, if we were to remain here for six months longer, without we were to stipulate the payment of money, and a great deal of it, in some shape or other, we should not be able to effectuate the objects of our mission, should we be even officially received.¹

On March 18, 1798, Talleyrand brought matters to a head by summarily dismissing Messrs. Pinckney and Marshall as persons hostile to France, but offering "to treat with that one of the three [Mr. Gerry] whose opinions presumed to be more impartial, promise, . . . more of that reciprocal confidence which is indispensable." ²

Thereupon nothing remained for Pinckney and Marshall but to return as promptly as possible. Mr. Gerry was induced to remain. Talleyrand took care that one commissioner should stay in Paris, in order that diplomatic relations might not be broken off.

John Adams anticipated some such crisis in the negotiation on the very first intimation from the Commissioners of the difficulties they were likely to encounter.

On March 23, 1798, the Secretary of State, by direction of the President, instructed the envoys not to procrastinate,

For you will consider that *suspense* is ruinous to the essential interests of your country. . . .

In no event is a treaty to be purchased with money, by loan or otherwise. There can be no safety in a treaty so obtained. A loan to the Republic would violate our neutrality; and a *douceur* to the men now in power might by their successors be urged as a reason for annulling the treaty, or as a precedent for further and repeated demands.³

When the full story of the outrage which Talleyrand had committed on the American plenipotentiaries reached the United States, Gerry was peremptorily recalled, and the President, on June 21, 1798, sent his once famous message to Congress, in which, after congratulating the country on the arrival of John Marshall in a place of safety, he ended thus: "I will never send another minister to France without assurances that he will be received, respected and honored, as the representative of a great, free, powerful and independent nation." ⁴

¹ *American State Papers*, Foreign Relations, II. 166.

² *Ib.* 191.

³ *Ib.* 200, 201.

⁴ *Ib.* 199.

An explosion of popular indignation followed. A very strong faction of the Federal party at whose head stood Alexander Hamilton determined upon war. The President, on the contrary, felt inclined to suspect that the French would not risk hostilities if they found in America an adversary ready and willing to fight, and dangerous upon the ocean. Accordingly he addressed all his energies to organizing an effective force upon the sea; a force sufficient to demonstrate to the French that reprisals would no longer pay. In regard to the policy of arming, the President and Congress were agreed.

The two most important acts which were passed at this crisis were, first, that authorizing the President to instruct the commanders of armed ships to capture French vessels which had committed depredations;¹ and second, that authorizing the commander and crew of any merchant vessel to defend itself against search and seizure by ships flying French colors, until the French government should cause its commanders to refrain from lawless depredations. When the French stopped reprisals, the President was to instruct American commanders to submit to regular search.²

There was abundant reason for arming merchantmen; in fact, the country had no other resource. The United States, in 1798, had but three frigates which could be prepared for sea, and a few converted merchantmen. If the French were to be resisted, it must be through private effort. And this was the better policy also, as the President did not contemplate war. His instructions only authorized retaliation on armed ships which should have committed spoliations, in order to make spoliation hazardous and costly. They did not authorize aggression. It was as though the government had called for volunteers to garrison the frontier to repel attack.

The President issued several instructions to commanders to resist the French search; the earliest are of May 28, 1798. The effect was immediate, and, beyond all expectation, good. On January 17, 1799, the Committee of the House of Representatives, to whom was referred so much of the President's speech as related to the navy, reported:

¹ Statutes at Large, I. 561.

² *Ib.* 572.

That about the time of the sailing of our ships of war, and before the merchant ships were permitted to arm for their defence, our trade was in such jeopardy, at sea and on the coast, from French privateers, that but few vessels escaped them; that ruin stared in the face all concerned in shipping; and that it was difficult to get property insured; that insurance stood at the following rates in Philadelphia, at that time:

	Out %	Home %
Russia	22½	22½
Sweden	20	12½
Denmark	17½	17½
Holland	20	17½
Great Britain . . .	17½	17½
Spain	17½	17½
Italy	27½	27½
China and India . .	20	15
West Indies	17½	17½

That at this time insurance can be had at the following rates, in the same offices:

	Out %	Home %
Russia	12½	12½
Sweden	12½	12½
Denmark	10	10
Holland	15	12½
Great Britain . . .	10	10
Spain	12½	12½
Italy	17½	10
China and India . .	10	10
West Indies	12½	12½

The committee beg leave to state, as their opinion, that the measures taken for the protection of the commerce of the United States, and subsequent thereto, have saved to the United States considerably more than all the expenses incurred by the naval establishment.¹

The principle involved in this measure is clear, and was expounded in a circular issued by the Treasury Department, on April 8, 1797, just a year before arming against the French was authorized by Congress.

¹ *American State Papers*, Naval Affairs, I. 69.

"The question is, Whether it be lawful to arm the merchant vessels of the United States for their protection and defence, while engaged in regular commerce."

It is answered: "That no doubt is entertained, that defence, by means of military force, against mere pirates and sea rovers, is lawful." The arming of vessels bound to the East Indies "is therefore, on account of the danger from pirates, to be permitted; . . . but as the arming of vessels destined for European or West Indian commerce raises a presumption that it is done with hostile intentions against some one of the belligerent nations . . . it is directed that the sailing of armed vessels, not *bona fide* destined to the East Indies, be restrained, until otherwise ordered by Congress."¹

These instructions expose the whole controversy with France in a nutshell. So long as France could by possibility be considered as exercising in good faith a belligerent right of search, resistance, though permissible, was not formally authorized. When France openly declared that she was indemnifying herself by reprisals for a supposed breach of treaty obligations, resistance to search became not only permissible under international law, as it had been since 1796, but a duty expected by the State from her citizens. And, of course, losses sustained either in making or resisting reprisals gave a claim for damages on the part of both nations and individuals. In February, 1800, Captain Truxtun, in the *Constellation*, defeated *La Vengeance*, a French frigate of fifty guns, off Guadeloupe, and the French subsequently, when it came to making up an account, were careful to include their right to compensation for the loss of national ships.

John Adams, however, had been right in his forecast: the French did not contemplate war with the United States. They wanted money, they were far from wishing to waste money on a new and unnecessary enemy. There was no single day in the year 1798 when Talleyrand allowed diplomatic relations with the United States to lapse absolutely. When Gerry departed, against his remonstrances, Talleyrand immediately opened communications with Mr. Vans Murray, the American Minister at The Hague.

On June 21, 1798, the President made his pledge never to

¹ *American State Papers*, Foreign Relations, II. 78.

send another minister to France until he should be assured that his envoy would be respected. On July 20, 1798, Elbridge Gerry, who had tarried in Paris after his colleagues, wrote to take leave. On July 22 Talleyrand replied. The news of the President's message had just arrived. Talleyrand then urged, in a very conciliatory spirit, that

a negotiation may therefore be resumed even at Paris, where I flatter myself you have observed nothing but testimonies of esteem, and where every envoy who shall unite your advantages cannot fail to be well received . . . By information which it [the French Government] has just received, it indeed learns that violences have been committed upon the commerce and citizens of the United States in the West Indies and on their coasts. Do it the justice to believe that it only needs to know the facts, to disavow all acts contrary to the laws of the Republic and its own decrees. A remedy is preparing for it, and orders will soon arrive in the West Indies calculated to cause everything to return within its just limits, until an amicable arrangement between France and the United States shall re-establish them respectively in the enjoyment of their treaties. This period, sir, cannot be too near at hand.¹

But Talleyrand's exertions to remedy the error he had committed by dismissing the Commission did not end here. In an instant he reversed his whole attitude. On the eve of Gerry's departure Gerry received a visit from the Dutch Minister, who, at Talleyrand's instigation, proposed mediation. Gerry, declining to enter on the subject, left for Havre. While there, on August 8, 1798, he received a note from Talleyrand enclosing an extract from the "Deliberations of the Executive Directory," in which they acknowledged their liability for piracy conducted under the French flag, and published decrees restraining it in future. On August 16, 1798, the Directory, wishing to show "the pacific disposition of the French Republic," raised the embargo upon American vessels which had been imposed a month before on news of American reprisals.

Meanwhile, Talleyrand established communication with William Vans Murray, American Minister at The Hague, and as early as August 28, only two weeks after Gerry sailed, he had arranged a basis on which to reopen negotiations. He instructed

¹ *American State Papers*, Foreign Relations, II. 222.

Pichon, his Secretary of Legation at The Hague, to assure Murray that France "never thought of making war against them [the United States], nor exciting civil commotions among them; and every contrary supposition is an insult to common sense."¹

Just one month later, and as soon as he thought his overture might succeed, he conveyed the assurance, demanded by the President, "that whatever plenipotentiary the Government of the United States might send to France, in order to terminate the existing differences between the two countries, he would be undoubtedly received with the respect due to the representative of a free, independent and powerful nation."²

On receiving this invitation to renew relations the President sent to the Senate on February 18, 1799, his celebrated message nominating Murray as Minister Plenipotentiary to France. A week later he added the names Chief Justice Ellsworth and Patrick Henry,³ making a commission of three, the two latter not to embark until they received satisfactory assurances that they would be becomingly treated. I need not relate the anger of the extreme Federalists at the prospect of reconciliation. Mr. Adams's cabinet opposed him and attempted to prevent the embarkation of the mission. Hamilton's attack upon Adams in the election of 1800,⁴ caused by the second mission to France, split the Federal party and brought in Jefferson, but the President prevailed. The Commission reached Paris; there they negotiated the convention of September 30, 1800, a convention which was confirmed by a Republican Senate, and it is pretty safe to assert, as I have before observed, that probably the United States has never gained more relatively to cost than by these two state papers: the treaty of 1794, and the convention of 1800.

It now remains to determine precisely what the convention of 1800 meant, so far as it related to compensation for losses. The whole basis of the negotiation and settlement is stated with perfect precision in the French Commissioners' note of August 11, 1800.

¹ *American State Papers*, Foreign Relations, II. 241.

² *Ib.* 242.

³ Henry declined and Davie was named in his place.

⁴ *The Public Conduct and Character of John Adams*. It will be found in *Works of Hamilton* (Lodge), VI. 391.

The first proposition, then, of the ministers of France is, to stipulate a full and entire recognition of the treaties, and a reciprocal promise of indemnities for the damages resulting, on the part of either, from their infraction. . . .

The second proposition of the ministers of France, in case the former shall not be accepted, will then be the abrogation of ancient treaties; the formation of a new treaty, in which the French nation, abandoning a privilege inconvenient to the United States, shall be placed, in her political and commercial relations, on an equal footing with the most favored nations; and an entire silence on the subject of indemnities.

Thus, the proposition which the ministers of France have the honor to communicate to the Ministers Plenipotentiary of the United States is reduced to this simple alternative:

Either the ancient treaties, carrying with them the privileges resulting from anteriority, together with stipulations for reciprocal indemnity; or a new treaty, promising equality, unattended with indemnities.¹

The United States chose the latter alternative. It bought release from the treaties of 1778 for the price of the value of the reprisals which had been made by France on American commerce during four years. These reprisals were, as the Court of Claims has decided, a forced loan, and for that forced loan the Government of the United States is admittedly responsible, though it has repudiated the interest account and denied compensation to its creditors for more than one hundred years.

Also it is demonstrable that if the United States was able to check the reprisals of France, to put a summary end to her threats of vengeance should the United States decline to pay ransom, and to reduce the clamors of her officials for bribes to dead silence, all in a few weeks, it was because the Union showed itself capable of putting a stronger force at sea than France was able to collect upon its coast. And that America succeeded in this effort was due to such men as those who fought the schooner *Endeavor*, not in actions waged by smugglers to repel a lawful search for contraband, but in actions waged to defend their country against the piratical acts of a powerful but mercenary friend. The exactitude of this asser-

¹ *American State Papers*, Foreign Relations, II. 331, 332.

tion will appear upon an examination of the relative power of the regular and volunteer navy. The United States had, in January, 1799, but three frigates, a ship and two brigs, built by the public, and eight converted merchantmen. In all fourteen ships of a total capacity of 8,642 tons, carrying 352 guns.¹ Whereas, on March 2, 1799, the President informed Congress that 365 private armed vessels had been commissioned, with a capacity of 66,691 tons, armed with 2,723 guns, and manned by 6,847 men.² There were but 3,120 men in the government service, and of these 1,140 served on the three frigates, which had a very limited sphere of action.

The history of the negotiations which led up to the convention of 1800, and the legal effect of that convention when negotiated, have been ably stated in the opinion in *Gray v. United States*. One portion of these negotiations was not adverted to in that opinion, and that is the portion which discloses the intent of the parties to the treaty in regard to the character of the claims for compensation, which it was the purpose of the convention to liquidate.

When examined thus historically, however, the sequence of cause and effect is clear.

We are always led back to the starting point. Prior to 1795 the French had searched American ships for contraband of war, and occasionally had abused the right of search. Subsequently to 1795 they no longer searched American ships for contraband of war; they seized them whether they contained contraband or not.

Before 1794 a conciliatory diplomatic spirit prevailed. From the outbreak of the war between France and England, both belligerents had transgressed neutral rights, and transgressed them, avowedly, as a military necessity. For these transgressions both France and England admitted liability, and England paid her bill after Jay's treaty was proclaimed. In like manner France admitted her torts. "At this point, therefore, we have on both sides an admission of the validity of claims arising from the spoliations — the President, in the proclamation and circular letter, the French in their decrees, as well as in a letter to the Secretary of State (March 27, 1794), in which the

¹ *American State Papers*, Naval Affairs, 1. 58.

² *Ib.* 71.

French Minister wrote that, 'If any of your merchants have suffered any injury by the conduct of our privateers . . . they may with confidence address themselves to the French Government.'"¹

As late as February, 1795, Washington told Congress that "these claims are in a train of being discussed with candor, and amicably adjusted." . . . The Jay treaty entirely changed the situation; France violently remonstrated, treated Monroe with insult, refused to receive Pinckney, threw off the last restraints upon its cruisers and privateers, and its colonial agents joined with so much vigor in the illegal attack upon a peaceful and neutral commerce, that "American vessels no longer entered the French ports unless carried in by force."¹

At this moment the period of reprisals opened; and damages from reprisals are governed by their own law, a law almost the reverse of that relating to the belligerent right of search.

When the convention of 1800 was signed, the peaceful animus related back to the year 1794, and it became the duty of the United States to ascertain the losses which her citizens had incurred through French reprisals. These losses, which she had confiscated to obtain a settlement, her duty was to pay, precisely as France would have paid them had America elected to maintain the treaties of 1778. It is self-evident also that these losses should have been determined in 1800 according to the code touching reprisals, and not according to another and irrelevant code. The same principle applies now.

Therefore, to determine them, we should begin by eliminating the war between France and England, and consider the reprisals made by France as though they had been caused by a difference between the United States and Great Britain which had led to the abrogation of the treaties of 1778, France and England remaining throughout the difference at peace.

In fact, Washington contemplated such a possibility in 1790, when he explained to John Adams the untenable military position in which the United States would be placed in case the British should advance from the western posts, at the same time pressing on the coast with their navy. Very possibly such a contingency would have occurred in connection with the

¹ Gray v. United States, 21 Court of Claims, 376.

Indian wars, which the British so continually fomented, even before 1800 as it actually occurred in 1813, had not the French Revolution supervened.

Supposing some offensive movement by the British about 1795, in all probability Washington would have been driven to ransom the posts by the sacrifice of the French alliance, much as he did by accepting the Jay treaty. Then the French would have made reprisals and one of two effects would have followed. First, war might have ensued. If so, all private claims would have been merged in the national fortunes. As the French Commissioners pointed out in 1800, the two governments would then have no longer been occupied "with their respective losses; the rights of war acknowledge no obligation to repair its ravages; their consideration even is prohibited by national honor, since the State inflicting the greatest injury would, by making compensation, acknowledge a victor and purchase peace."¹

But if reprisals had been ended by a treaty like that of 1800, then peace, as Lord Stowell decided in *The Boedes Lust* (5 C. Robinson, 246), would have related back. The seizure "was at first equivocal; and if the matter in dispute had terminated in reconciliation, the seizure would have been converted into a mere civil embargo, so terminated. That would have been the retroactive effect of that course of circumstances."

This was precisely what occurred between the United States and France; and Lord Stowell has thus, in *The Boedes Lust*, given his opinion of what should be the legal relations of these two nations who averted a war by a convention terminating reprisals in reconciliation.

The substance of an appeal to war is that the stronger shall keep what he has taken; the substance of a reconciliation terminating reprisals is that each party shall be restored, as nearly as possible, to the condition before reprisals began. Such was the agreement between Spain and England in 1739, made to terminate a period of reprisals of long duration. This was their contract:

ARTICLE III. After having duly considered the demands and pretensions of the two Crowns, and of their respective subjects, for

¹ *American State Papers*, Foreign Relations, II. 332.

reparation of the damages sustained on each side, and all circumstances which relate to this important affair; it is agreed, that his Catholic Majesty shall cause to be paid to his Britannic Majesty the sum of ninety-five thousand pounds sterling for a balance, which has been admitted as due to the Crown and subjects of Great Britain, after deduction made of the demands of the Crown and subjects of Spain.¹

In such a settlement of mutual damages one of the most important items is the national loss. I wish to point out the care taken to provide for this item in the treaty of 1739; the balance was for claims due to the *Crown*, etc., of Great Britain, after deduction made of the demands of the *Crown*, etc., of Spain. On this occasion the chief losses of the respective crowns must have been losses incurred in action; that is to say, losses of men-of-war, or of captured treasure ships.

Similarly, in 1800, when the Commissioners were seeking a basis for striking a balance, both sides were particular to provide for compensation for national ships lost in action.

The Americans based their contention upon two propositions, found again and again throughout their correspondence; the argument was that the French had been the aggressors and therefore should pay all damages.

First: That "it was not till after the treaty of amity and commerce, of February, 1778, had been violated to a great extent on the part of the French Republic, nor till after explanations and an amicable adjustment, sought by the United States, had been refused, that they did, on the 7th day of July, 1798, by a solemn act, declare that they were freed and exonerated from the treaties and consular convention which had been entered into between them and France."

Justified by the lawless acts of France, "that declaration cannot be recalled; and the United States must abide by its effects, . . . whatever inconveniences may result to themselves."

The second followed as a corollary of the first: "To abandon indemnities would be illy to select the means of restoring France to the confidence of a nation, too long accustomed to revere and practise justice, ever to forget its demands. Nor

¹ Jenkinson, *A Collection of all the Treaties of Peace, Alliance, etc., between Great Britain and Other Powers*, II. 341.

could America ever conceive that, protecting from depredations her property which remains, had impaired a claim for that of which she has been despoiled.”¹

On reaching Paris, the first step of the American Commission was to present the draft of a treaty embodying this theory of the law.

The second article thereof provided for the formation of a board of five commissioners “for the purpose of ascertaining the amount of . . . losses and damage sustained either by citizens of the United States or of the French Republic.”²

This amounted to asking the French to accept the abrogation of the treaties and pay for their reprisals beside. To such a proposition France would not assent. It was true that the French had destroyed some twenty million dollars’ worth of American property, but the profit to France had been by no means commensurate with the damage to America. No process of collecting a debt is so wasteful as piracy, not even legitimate war. Nor was this all; the amount of the reprisals, though considerable, was small in comparison with the loss occasioned by the insurrection in Santo Domingo, and the French attributed the tenacity of the rebellion there altogether to the aid the rebels received from the United States. Therefore the French would give no ear to the first suggestion of the American envoys. Thereupon the Americans made a somewhat better bid. They offered a partial recognition of the old treaties, with an option of buying relief from them for \$1,000,000. At the same time they took care to stipulate very closely for the amount of other indemnity for which the United States might be held liable:

“5. There shall be a reciprocal stipulation for indemnities, and these indemnities shall be limited to the claims of individuals, and adjusted agreeably to the principles and manner proposed by the American Ministers in their project of a treaty heretofore delivered, except where it shall be otherwise agreed. Public ships taken on either side shall be restored or paid for.”³

The above clause substantially fixed the limit of what America might be called upon to pay at \$1,000,000, together with

¹ *American State Papers*, Foreign Relations, II. 320, 333.

² *Ib.* 316.

³ *Ib.* 334.

the value of the ships which she had damaged in action. The individual citizens of France had suffered little or no loss. France in her corporate capacity had suffered severe losses. These last were assessed at \$1,000,000 over and above her disabled frigates and privateers. These vessels the United States offered to make good.

It is not surprising that the French declined to entertain this second proposition as well as the first, and steadily adhered to their original alternative.

The United States might elect to stand by her treaties; then France would pay the United States for the property she had taken to compensate herself for their breach; or,

The United States might elect to abrogate the treaties; if so, the French estimated their indemnity as the sum total of their captures, and refused to abate a dollar of that amount.

They insisted, "1. That a stipulation of indemnities carries with it a full and entire recognition of the treaties; and

"2. That the abandonment of the advantages and privileges stipulated by the treaties, in consideration of the reciprocal abandonment of indemnities, will be the most useful and honorable arrangement for both nations."

But if there were to be indemnities, "the vessels [meaning privateers, for France had lost no other save national ships] and national ships, respectively taken, shall be restored or paid for." ¹

Nothing can be clearer on these facts than the position of the parties. They had been engaged in a dispute over the breach of a treaty and in that dispute damage had been inflicted on both sides. The very essence of the damage which was to be repaired was attack and defence at sea. That was not only admitted but insisted upon by each alike. The enforcement or the abuse of the belligerent right of search had nothing to do with the question at issue, save collaterally as a possible defence which might be set up by France. It was open to France to prove by independent evidence that certain of the vessels which she seized by way of indemnity for breach of international obligations, were rightfully her prize because they contained contraband of war destined for her enemy.

If, however, France proposed to set up the defence that a certain captured ship had been guilty of carrying contraband

¹ *American State Papers*, Foreign Relations, II. 338.

of war, she would have been precluded from introducing as evidence to prove her contention, that the ship in question had admitted her guilt by declining to be searched, because such evidence would have been irrelevant to the issue.

During reprisals the ships of neither party can allow themselves to be boarded by the other, because if they do allow themselves to be taken they will be condemned, and their innocence of smuggling will be no protection. Therefore, during reprisals, all ships which can must, in self-defence, resist. No alternative is open. On the other hand, after reconciliation has taken place and mutual indemnities are provided for, it is, of course, open to one of the parties to the reprisals, who happens also to be a belligerent, to prove by any competent evidence he may possess that a certain captured ship was found, as a substantive fact, to be laden with contraband of war. In such a case, however, the burden of proving a guilty cargo must rest upon him who sets up as defence the capture of contraband of war, in answer to a claim for compensation for a seizure during reprisals of a merchantman presumably innocent. Here there is no attempt made to introduce such evidence of guilt, or indeed evidence of anything save of resistance to an armed ship flying both the French and the piratical flags. In this case, on the contrary, I apprehend that, reprisals apart and under Lord Stowell's own decisions, the schooner *Endeavor* had a lawful right to resist being boarded, and that such resistance raised no presumption against her of being engaged in illicit trade.

The soundness of this proposition becomes manifest the moment the theory of the belligerent right of search is analyzed.

A belligerent arrests and searches a neutral ship for contraband of war in order to discover whether she is smuggling for the enemy in contempt of municipal and international law. A ship carrying contraband is a smuggler, and, therefore, being engaged in illicit trade, is beyond the protection of her own government, like to, but in a less degree than, a slaver or a pirate. But a ship not carrying contraband is innocent, and it is therefore no hardship, or but a slight hardship, for the crew to permit an examination of her cargo; the theory being that, should she be wrongfully detained, she shall be compensated either by the government detaining her, should the captor be a national ship, or by the owners of the privateer, should she be

taken under letter of marque. For this purpose the owners of privateers file a bond. But before a ship can be condemned for carrying contraband there must be evidence that she has contraband on board. This evidence may be of various kinds. One kind is a confession of guilt made by resistance to process; that is, by resistance to search. I need hardly point out that no such presumption can arise unless conditions be such as to create a prior presumption that the search, or the service of process, is legitimate, and made in good faith. If the presumption is that the search is made with a felonious animus, resistance cannot be considered an admission of guilt.

Nothing can be more incorrect than to assume that, as between nations at peace, the right of search for contraband is an arbitrary power to be exercised at the will of a belligerent. On the contrary, according to Lord Stowell, it is a right resembling the execution of civil process, and its lawful enforcement is as rigorously limited. Not to be prolix, I shall confine myself to a single authority, Lord Stowell's decision in the *Maria* (1 C. Robinson, 340); his leading discussion of the lawfulness of resistance.

In that case Lord Stowell laid down four propositions:

1st. That the right of search by a belligerent for contraband of war resembles civil process, and may be executed only by lawfully commissioned cruisers, without violence.

2d. That, where no violence is threatened, but the utmost inconvenience which the party searched can undergo is a detention which is made good, if done vexatiously or without just cause, resistance is unlawful and raises a conclusive presumption of guilt.

3d. That where violence is threatened by a cruiser abusing his commission, resistance is justifiable, precisely as resistance is justifiable to a constable abusing his commission.

4th. That the belligerent must provide competent and impartial courts to redress any wrong done the neutral who has been arrested. The following extracts from the opinion in the *Maria* cover these propositions of law:

1st. The right of visiting and searching merchant ships upon the high seas, . . . is an incontestible right of the *lawfully commissioned* cruisers of a belligerent nation. Page 359.

The right must unquestionably be exercised with as little of per-

sonal harshness and of vexation in the mode as possible; but soften it as much as you can, it is still a right of force, — though of lawful force, — something in the nature of civil process, where force is employed, but a lawful force, which cannot lawfully be resisted. . . .

The only case where it can be so in matters of this nature, is in a state of war and conflict between two countries, where one party has a perfect right to attack by force, and the other has an equally perfect right to repel by force. Page 360. [There "conflict" is evidently equivalent to "reprisals." The phrase might as well have read "war and reprisals."]

2d. I don't say that cases may not occur in which a ship may not be authorized by the natural rights of self-preservation to defend itself against extreme violence threatened by a cruiser grossly abusing his commission, but where the utmost injury threatened is the being carried in for inquiry into the nearest port, subject to a full responsibility in costs and damages if this is done vexatiously and without just cause; a merchant vessel has not a right to say for itself (and an armed vessel has not a right to say for it), "I will submit to no such inquiry, but I will take the law into my own hands by force." Page 373.

3d. That the penalty for the violent contravention of this right is the confiscation of the property so withheld from visitation and search because a contumacious refusal to submit to a fair inquiry infers all the penalties of convicted guilt. Page 363.

4th. I take the rule of law to be, that the vessel shall submit to the inquiry proposed, looking with confidence to those tribunals whose noblest office (and, I hope, not the least acceptable to them) is to relieve, by compensation, inconveniences of this kind, where they have happened through accident or error; and to redress, by compensation and punishment, injuries that have been committed by design. Page 374.

In the light of these conclusions, I set forth the following official avowals made by the French, of their attitude during the years from 1796 to 1800, toward the United States.

On July 22, 1798, on the eve of Mr. Gerry's departure from Paris, Talleyrand wrote him that the Directory "indeed learns that violences have been committed upon the commerce and citizens of the United States in the West Indies, and on their coasts."¹

Of course the facts had been notorious and encouraged by the French Government for several years, but to avert a rup-

¹ *American State Papers*, Foreign Relations, II. 222.

ture the Directory made the following formal confession of permissive piracy and a collusive judiciary. This admission it sent to Mr. Gerry, to be communicated to the President, upon his arrival in the United States, as an inducement to the President to send out a new commission.

PARIS, THE 13TH THERMIDOR,
6TH YEAR OF THE FRENCH REPUBLIC
[July 31, 1798].

The Executive Directory having heard the report of the Minister of Marine and the Colonies;

Considering that information recently received from the French colonies and the continent of America leave no room to doubt that French cruisers, or such as call themselves French, have infringed the laws of the Republic relative to cruising and prizes;

Considering that foreigners and pirates have abused the latitude allowed at Cayenne, and in the West Indian Islands, to vessels fitted out for cruising, or for war and commerce, in order to cover with the French flag their extortions, and the violation of the respect due to the law of nations, and to the persons and property of allies and neutrals; DECREES:

ART. I. Hereafter, no letters of marque, authorizations, or permissions, to fit out vessels either for cruising, or for war and commerce, shall be issued in the colonies of America, but by the special agents of the Directory themselves, who shall not delegate that power to anyone; they shall exercise it only in favor of owners of vessels whose principles and responsibility are well known to them; and they shall be bound to conform themselves to all the laws relating to cruising and prizes, and especially to those of the 1st of October, 1793 (O. S.).

ART. II. All letters of marque, authorizations, or permissions, granted in the colonies of America by the particular agents of the Executive Directory, and all other agents, civil and military, under their orders, to fit out vessels either for cruising, or for war and commerce, shall be considered as not having been done, after the thirtieth day from the publication of the present decree in the said colonies.

ART. III. All agents and other deputies in the neutral possessions, appointed to decide there upon the validity of prizes taken by the French cruisers, and who shall be suspected of having a direct or indirect interest in the vessels fitted out for cruising, or for war and commerce, shall be immediately recalled.

ART. IV. The special agents of the Executive Directory at Cay-

enne, St. Domingo, and Guadeloupe, shall studiously take care that the interests and property of vessels belonging to neutrals or allies be scrupulously respected; and they shall in no case bargain for their cargoes, but by mutual consent, and to the full and entire satisfaction of the contracting parties.

ART. V. The said special agents of the Executive Directory, the commanders of all vessels of the Republic, the consuls, vice consuls, and all others invested with powers for that purpose, shall cause to be arrested and punished, conformably to the laws, all those who shall contravene the provisions of the present decree, which shall be printed in the bulletin of the laws, and with the execution of which the Ministers of foreign relations, and of the marine and the colonies, are charged.¹

I give, to show the meaning of this decree, historical evidence of the conditions which prevailed in Guadeloupe, as an example of what prevailed in the West Indies. One Victor Hugues, the son of a baker of Marseilles, born in 1762, ran away to sea and finally established himself at Port-au-Prince, in Santo Domingo. There he prospered, but ultimately lost his property in the servile insurrection, in which his brother also lost his life. Escaping to France in 1792, Hugues became public accuser at Rochefort and distinguished himself by the massacre of the officers and crew of the *Apollon*, an act so blood-thirsty as to raise him to eminence even under the shadow of Robespierre.

As a reward, the Revolutionary Government, in February, 1794, sent Hugues to Guadeloupe as Commissioner, with unlimited powers and a new guillotine. Hugues went to the West Indies to retrieve his fortune and he succeeded. In twenty-one months he had become rich, chiefly through confiscations, murder and piracy. As the historian of Guadeloupe has observed, under Hugues "The morality of the government and the people was contained in one word, 'pillage.'" ² Probably his chief source of revenue was from the pirates, which he pretended to commission. In almost all the buccaneers which swarmed in the harbors of Guadeloupe Hugues was an owner. Lacour has given a long list of his privateers, some of which were of great value. In one so-called armed merchantman, car-

¹ *American State Papers*, Foreign Relations, II. 222, 223.

² Lacour, *Histoire de la Guadeloupe*, II. 394.

rying twelve guns and fifty men, estimated to be worth 257,754 francs, his share was 87,754 francs, while he bought out his partner in the *Dorade* for 80,000 francs.

"In order that the profits from his investments in the privateers should be large and sure, nothing could be left to chance. On the contrary, every captured ship, rightly or wrongly, had to be condemned."¹

The prize court once undertook to go into evidence concerning the ownership of an American brig which had been brought in by one of his cruisers, the *Ameline*. Thereupon Hugues wrote to the judges, threatening to bring them before what he called a "competent tribunal," to have them punished, and to cause judgment to be pronounced himself.

After this, another ship being released, he wrote, on November 10, 1797: "We have just named new judges to replace you. Therefore from this day forward you will abstain from taking cognizance of any cause whatever."²

Besides his ventures in piracy, Hugues speculated in the cargoes of his captures and in exacting ransoms from his captives, whom he cast into his dungeons, where their fate may be conceived. As cruel as he was corrupt, Hugues' government was "the negation of all that constitutes a civilized society. . . . No laws, no tribunals, no justice, everywhere arbitrariness, . . . extortion, piracy, pillage; such was the government of Guadeloupe."³

No code of law ever required that the seamen of an independent nation should surrender their ships without resistance at the summons of bloodthirsty ruffians like Victor Hugues and such as he.

It was precisely because of this notorious collusion of the French authorities and courts with the so-called privateers, or, to speak plainly, pirates, that the Ellsworth commission, in the second article of the project for a convention submitted at Paris on April 17, 1800, proposed that the Commissioners who should be authorized under the convention to adjust the claims of both parties, should "not, in examining claims under this article, be concluded either as to law or facts, by any judicial decision, sentence or decree, which has been had or rendered

¹ Lacour, *Histoire de la Guadeloupe*, II. 418.

² *Ib.* 422.

³ *Ib.* 474, 475.

therein. And they shall decide the claims in question according to the original merits of the several causes.”¹

This proposition was reiterated in the second project, submitted August 20, 1800.

5. There shall be a reciprocal stipulation for indemnities, and these indemnities shall be . . . adjusted agreeably to the principles and manner proposed by the American Ministers in their project of a treaty heretofore delivered, except where it shall be otherwise agreed. Public ships taken on either side shall be restored or paid for.²

The last article was accepted by the French, substantially without modification, in their counter proposition of September 13, 1800, in which they acceded to mutual indemnities, provided the old treaties should be maintained inviolate.

The ministers of France understand [commenting on the fifth proposition of the American Ministers, of August 20], —

1. Indemnities shall be provided for captures made from individuals, and which shall have been condemned at the time of signing the treaty.

Therefore the French plenipotentiaries admitted that the decrees of their prize courts were not, in the eye of the law, even *prima facie* evidence of a condemnation binding on a neutral.

Thus the French, by solemn official declarations, prove that between 1796 and 1800, they offered Americans no single one of those guarantees for their personal safety, or for the protection of their property, which Lord Stowell held that belligerents must offer to neutrals before they can exact from them unresisting submission to the search for contraband of war.

I take up Lord Stowell's conditions *seriatim*.

The search must be conducted by lawfully-commissioned cruisers. The French revoked all their commissions in the West Indies because they were unlawful. At the head of the agents who granted these commissions stood Hugues.

The belligerent must provide tribunals to relieve by compensation, inconveniences arising from accident or error, and to redress, by compensation and punishment, injuries committed by design.

¹ *American State Papers*, Foreign Relations, II. 317.

² *Ib.* 334.

The French disgraced their judiciary because substantially the whole body were proved to be in collusion with pirates, like those appointed by Hugues.

The right must not be exercised with harshness.

The French admitted that the ships which pretended to the right to search American merchantmen were pirates and foreigners, who used their flag to cover their "extortions."

Lord Stowell held that the "rights of self-preservation" justified self-defence against "extreme violence."

The French Minister of Foreign Affairs avowed that "violences have been committed upon the commerce and citizens of the United States in the West Indies, and on their coasts."

Nor can I forbear to give, on the authority of the Secretary of State of the United States then in office, Timothy Pickering, an exact definition of what those "violences" were, which, I insist, justified, under any code of law, either international or municipal, which ever existed, the exercise of what Lord Stowell called "the natural right of self-preservation."

Those "cruel depredations on American commerce, which have brought distress on multitudes, and ruin on many of our citizens; and occasioned a total loss of property to the United States of probably more than twenty millions of dollars, besides subjecting our fellow citizens to insults, stripes, wounds, torture and imprisonment." ¹

Lord Stowell's analogy between the enforcement of the right of search and the execution of civil process is entirely sound. Both are functions of sovereignty, resting on force, but which may be resisted by the subject, if unlawfully exercised. Lord Stowell was an excellent lawyer, and unlikely to err in a technical matter.

In an international question, such as this, the rights of the parties should not be judged by municipal law. In this litigation the Roman law should be our guide, and, under the Roman law, I submit, there could be no question. The Roman citizen might always resist an officer who transcended or abused his authority.

But waiving the Roman law, under our own municipal law, all admit that the citizen may always resist the process of a court without jurisdiction, or wrongfully asserting its authority.

¹ *American State Papers*, Foreign Relations, II. 232.

First: The citizen may resist the process of a court without jurisdiction.

The citizen may even resist the entry of an officer bearing the warrant of a court having jurisdiction, if the officer enter premises wrongfully, even though the officer may enter under the belief that he is entering rightfully. If he had not lawful authority to do the act he undertook to do, he may be expelled by force.¹

Second: Furthermore, the law accords to every man the right of self-defence when attacked and in danger of injury. Therefore, if an officer proceed in a threatening and violent manner calculated to put the person proceeded against in fear, that person may lawfully resist.

As the courts have held: "Whether the arrest be legal or not, the power to arrest may be exercised in such a wanton and menacing manner as to threaten the accused with loss of life or some bodily harm. In such a case, though the attempted arrest was lawful, the killing would be justifiable."²

The Court of Appeals of Kentucky has thus laid down the principle; he is justified in resisting arrest who

has reasonable grounds to believe and does believe, that the officer is not acting in good faith in the attempt to arrest, but is using his official position to gratify personal feeling against the person sought to be arrested, and that by submitting to arrest and to being disarmed, he will by reason of this fact, be in danger of great bodily harm or of losing his life.³

Had the Kentucky judiciary had in mind the situation of American merchantmen relative to French cruisers, during the period between 1796 and 1800, they could have written no words more apposite than these.

In fine, the officer acting without due authority or abusing his authority so as to create reasonable fear of loss or injury may be resisted.

In the words of Gray, J., in *West v. Cabell*, 153 U. S. 86:

An officer who acts under a void precept, and a person doing the same act who is not an officer, stand on the same footing; and any

¹ *Commonwealth v. Newton*, 123 Mass. 420.

² *Jones v. Texas*, 26 Texas, App. 12; *State v. Mundy*, 2 Marvel (Del.), 433.

³ *Fleetwood v. The Commonwealth*, 80 Kentucky, 5.

third person may lawfully interfere to prevent an arrest under a void warrant, doing no more than is necessary for that purpose.¹

The French Government solemnly and repeatedly admitted that their cruisers in the West Indies not only were without lawful commissions, being sailed by foreigners and pirates, but habitually used excessive violence. They were forced to do so, being confronted with the acts of men like Hugues.

In the case of the *Endeavor* in particular, no conceivable threat of violence could be more excessive than that of deliberately hoisting the piratical flag.

The convention of 1800 was peculiarly the work of John Adams. It was negotiated under his instructions and represented his notions of international law.

In this controversy the views of John Adams are entitled to weight, not only because he was Chief Magistrate during the period of these spoliations, but because he was admitted to be an excellent lawyer. Massachusetts recognized him as the head of her bar, at a time when her bar was famous, by making him her first Chief Justice. He may therefore be taken to have expressed the contemporary American doctrine relating to resistance to search and arrest. I feel, therefore, justified in appending a letter of John Adams, written to John Quincy Adams after the action between the *Chesapeake* and the *Leopard*, in which he developed his theories in relation to the lawfulness of resistance to an unreasonable exercise of the right of search and arrest.

QUINCY, January 8th, 1808.

Before the British proclamation appeared, I thought that peace might be preserved. Since that event I see no possibility of it. We may submit to the annihilation of our naturalization laws and to empressments of our seamen from our merchant vessels for a year or years; but every instance of it will be complained of to our Government, to whom it will be a perpetual source of vexation and humiliation, as well as to the people and the whole nation. It will keep alive an eternal hatred between the two countries, and end in a war at last. I agree with you we ought not and cannot suffer this new encroachment, nor do I know how we can take a stand against it, unless by resolutions of both houses of Congress and re-

¹ *Miers v. The State*, 32 Texas Crim. Rep. 187.

monstrance of the President against it, as a new and unjust interpolation into the law of nations, made by arbitrary power against America alone, and distinguishing her from all other nations. Impressment of seamen by the law of nations? What a daring act of despotism! What impudence! This style is not proper for a public man: but it is only calling a cat a cat.

I believe I have said to you, and I know I have said formerly to your colleague, Mr. Pickering, to Mr. Wolcott and McHenry, and others, that there was no distinction between ships of war and merchant ships in this respect. If the Britons have a right to impress seamen from a fishing smack, they have the same right from an hundred and twenty gun ship. The deck of a jolly boat at sea, is as much the territory of its sovereign, as the hold of a seventy-four, and as much under its jurisdiction, as the house of its ambassador in a foreign country. Children born on board merchant ships at sea, are considered as natural born subjects or citizens of the Power to which they belong. Elizabeth Breisler who was born at sea, half way between England and America, is as good a citizen of the United States as Joseph Arnold, Junior, her husband, who was born in Quincy and never was out of it, farther than Boston. This little domestic anecdote will illustrate the argument as well as anything more solemn.

With all due respect for his Majesty the King of England, I cannot justify his proclamation from the charge of usurpation and arbitrary power, by the constitution of his own kingdom. Nothing short of an act of Parliament could authorize his navy officers to impress a seaman out of any foreign ship. And if one of his subjects on board such a ship, should kill a midshipman in self defence it would be justifiable homicide by their own laws. On the contrary if an English officer should kill an English sailor, in attempting to impress him from an American vessel, it would be murder, and this proclamation could not be pleaded in justification or excuse of the crime. . . .

Michael Corbett and three other Irish sailors coming in from sea on board a vessel of Mr. Hooper's of Marblehead, were sought by Lieutenant Panton and a midshipman of the *Rose* Frigate at the head of a pressgang. The sailors retreated to the forepeake, and there, armed with such instruments as they could snatch in their flight, stood upon their defence. A parley ensued. Corbett said, I know you are a lieutenant of a man-of-war, come to impress us. We are determined to defend ourselves. You have no right to force us. We have retreated as far as we could, we can go no farther. Much altercation ensued. Some attempts were made to break down the bulkhead, and the midshipman in confusion fired a pistol, and wounded one of the four sailors in the arm. This the lieutenant

reproved, but attempted to enter. Corbett thrust him back, and marking a line in the cargo of salt in the hold, said, if you step over that mark again I shall take it as a proof of your determination to impress me, and by the eternal God of Heaven, you are a dead man. Ay, my lad says Panton, I have seen a brave fellow before now, took his snuff box out of his pocket, and snuffing up a pinch, resolutely stepped over the line. Corbett instantly threw an harpoon iron, which cutt off the carrottid artery and jugular vein. Panton cry'd the rascall has killed me, and fell dead in a few minutes.

A reinforcement came to the pressgang and the four men were taken. They were tryed by a special court of admiralty according to the statute. Governor Bernard presided, Mr. Hutchinson, then Lieutenant Governor and Chief Justice, Governor Wentworth of New Hampshire, Mr. Auchmuty, Judge of Admiralty, Commodore Hood, now Lord Bridport, and many others were the judges. I prepared long special pleadings in behalf of the prisoners, demanding a trial by jury, but these were overruled as I expected.

Upon the tryal the evidence of all the facts was very clear. I was much affected by the testimony of the English sailors. Their attention to their oaths and punctual veracity, and impartiality, was very striking. Not a circumstance which made against themselves was concealed or disguised.

I had prepared an elaborate investigation of all the doctrines of homicide in the civil law as well as common law, and the Statute which expressly forbid impressment in America. The civil law authority on which I relied the most was Gail, Foster, Hawkins, Lord Coke, in the common law. But I had not advanced far in my argument, before Chief-Justice Hutchinson arose and moved an adjournment of the court till the next day. His secret motives were two. 1st, To prevent me from reaping an harvest of glory; 2. to avoid a public exhibition of the law in all its details before the people.

Next morning Governor Bernard arose and said, that the Court had been together in private and as they were all of one mind they judged it unnecessary to proceed further in the consideration of the law or the evidence, and had ordered him to pronounce the action of the prisoners justifiable homicide, and the sentence not guilty. Not a word was said by any other judge.

I brought an action for the wounded sailor against the midshipman, and received a letter from Commodore Hood, asking favour for his midshipman as being worth nothing but his small pay, and offering to give my client the place of cook on board the *Rose*, worth twenty five guineas a year. This he refused, because he had fallen in love and would be married. The officers gave him such sat-

isfaction as he demanded and he wrote me orders to drop the action; and sailor-like, without ever paying my fees. This negligence made me laugh, but gave me no pain.

I had ample minutes of my researches in this case, but like all my other briefs, they are lost. The only minutes left are the report of the trial on writs of assistance, which Mr. Minot has preserved in his *History*. And this was saved by the roguery of a clerk.¹

I was amused with the feelings of the sailors, of the crew of the *Rose*. I met many of them in the street and on the floor of the Court House, who could not conceal their joy at the acquittal of my client. Some of them thanked me for my *noble conduct*, as they called it, in behalf of those brave fellows. One of them, a boatswain, who had been a witness, and given his testimony with remarkable coolness and candour, to the satisfaction of everybody, said to me, "Sir, I have been almost constantly employed for twenty years in work of this kind, impressing seamen, and I always thought I ought to be hanged for it; but now I know it, yet I can't help it."

I don't believe there is a jury in England at this day, who would not justify a sailor in resistance and condemn an officer for an impressment. When I was in England a committee of the city of London, or of the merchants of that city, were before the King in council. Thurlow, then Chancellor, said this practice of impressing is legal. The committee by their chairman answered "We acknowledge the high authority of your lordship's opinion, but we cannot concur in it."

Judge Foster in his *Crown Law*,² has assembled every colour of argument and authority to support the legality of impressment of seamen. Read it. You will find that it is only in case of a special warrant from the admiralty or King in Council that impressments are countenanced, and that only within the rivers, harbours, and nearest seas.

A right or pretension so equivocal and contestable in their own country and by their own laws, can never be transferred into the law of nations without the consent of all the world. A more groundless pretence was never advanced. They might as justly claim from all our vessels at sea, the ship money of Charles the First, or his

¹ In the second volume of Minot's *History*, page 99, is a marginal note against the discussion of writs of assistance, "M.S. minutes taken at the bar." See Quincy, *Massachusetts Reports*, 1761-1772, 478, 479.

² Michael Foster, whose standing as a judge and interpreter of the law is still high among writers on the law. The work referred to is, *A Report of Some Proceedings on the Commission of Oyer and Terminer and Gaol Delivery for the Trials of the Rebels in the Year 1746 in the County of Surrey, and of other Crown Cases. To which are added Discourses upon a few Branches of the Crown Law*. Oxford, 1762.

loans and benevolences. They might as well set up their Star Chamber and High Commissioned Courts.

By the laws of England allegiance is perpetual and inalienable. What then? You have or ought to have the power of commanding the allegiance and obedience of your own subjects. This doctrine may be feudal, may be ecclesiastical. It may be implied by the old doctrine of the divine right of kings. It may have descended with the holy oil with which they are anointed and consecrated. We acknowledge no such law divine or human. By our laws it is allowed to any Englishman, Irishman, or Scotchman, to renounce his allegiance to the king and become a naturalized citizen and then we are bound to protect him. If you get him into your territory, you will do with him as you please: but you shall not come to Philadelphia from sea, nor to Pittsburg from Canada and steal him, nor take him by force. If you do, we will arrest you, and try you, and punish you by our laws, not by yours. We would do the same at sea, if we could. But want of power takes away no right.

I see no difference between the cases you have stated. A recruiting officer from Canada might as well come within our lines, and take away a man by force and make him a British soldier. A recruiting officer in Liverpool, Halifax, or Jamaica, might as well go on board our ships and take away their sailors to make them soldiers. There is just as much reason and justice, in interpolating a right of impressing soldiers as seamen, into the law of nations. It is in vain to look into books on the law of nations, relative to this subject: because so absurd and extravagant a pretension was never thought of by any nation in the world, till now.

The policy of the Romans was very different. They allowed even their capital criminals to banish themselves. The privilege, the honor, the glory, the power and security of a Roman citizen was held to be of such inestimable value, that no man would voluntarily renounce it. To take it away from him was to many a punishment worse than death.

The word *plagiat*, I do not find in any book but the French. Kidnapping you may find in the American Encyclopædia. *Plagium* you may find in Calvin's *Lexicon Juridicum*, in Stephens's Dictionary and all the other dictionaries.

In the *Dictionnaire de Trevoux*, Tom. 6, *plagiat*, crime du *plagiaire*, *plagiaire*, s. m. *plagiarius*. Dans les lois Romains, ceux qu'on appelloit *plagiarii*, étoient des séducteurs, ou des espèces de voleurs qui attiroient, retenoient, achetoient, ou receloient les enfans de famille, de l'un ou de l'autre sexe, pour les dépayser, pour les vendre et les négocier à l'insu, et contre le gré de ceux à qui ils appartenoient.

De la, par similitude, et par extension, on appelle plagiaire chez nous celui qui pille, dérobe les ouvrages d'autrui pour se les approprier.

Fabri Thesaurus. Plagium proprie, crimen quo quis sciens liberum hominem, aut alienum mancipium, dolo malo vendit, emit, donat, celat.

Calvin's Lexicon. Plagium est, cum quis hominem ingenuum vel libertinum invitum celat, vinctum habet, dolo malo sciens emit, aut in earum rerum aliqua socius est, vel cum servo alieno servæve persuasit, ut a domino dominave fugeret, servum servamve invito domino dominave celavit, vinctum habuit, dolo malo sciens emit, quive in ea re socius fuit.

Hinc plagiarii sunt, qui furantur homines liberos vel servos eosque vendunt, aut iis persuadent, ut a parentibus vel dominis suis aufugiant.

Plagiatorum poena olim erat pecuniaria, quæ propter sceleris frequentiam in usu esse desinit: postea capitalis esse cœpit, et plerumque exilium, sive in metallum damnatio. Sane hominis liberi suppressio, pœnam habet mortis, quæ pœna etiam sacris literis est consentanea. Deut. c. 24.

The Britons had better devise a new article or a title in the law of nations and call it, the right of Britons to kidnap Americans. Their custom of impressment from their own ships is not more legal than the Dutch custom of kidnapping men for inhabitants of Batavia.

Why should not these modest gentry set up a right to kidnap us all, who were born before the Revolution? We have all the indelible character of British subjects. The King could not absolve us from that allegiance under which we were born, according to the English law. Why should they not kidnap your uncle Cranch, who has been sixty years in this country, and begotten a son and daughters.

The pretension is so much the more extravagant as it is inconsistent with their own whole conduct towards other nations, and the system of their laws. They have passed many acts of Parliament, which you will find in the statute book, granting various privileges to foreign seamen, and declaring such of them as shall serve a certain number of years to be naturalized and entitled to all the privileges of British subjects. Frenchmen, Spaniards, Swedes, Danes, Portuguese, etc. have the indelible character of perpetual, inherent, unalienable allegiance to the kings in whose dominions they were born. Yet an act of Parliament can absolve them. Why not, then, an act of Congress, or the Constitution of the United States?

You and I cannot follow our foederal friends, if we ever had any such, in their present doctrines and politics. Yet on the other side a close connection with France is to be dreaded. Intrigues like that of Beaumarchais, and that of X. Y. Z. to pillage money into private

pockets, and other intrigues of courtiers, will aim at gaining advantages of us in negotiation. But by employing such ambassadors as Arthur Lee, Ralph Izard, John Marshall, C. C. Pinckney and Elbridge Gerry, and above all John Jay, we may, as we ever have prevented, them from gaining any great advantage to our injury.

My system of impartial neutrality might have been pursued and this war avoided. J. Randolph might well say, that they ought to go to Braintree and ask pardon of John Adams for opposing him in his plan of foreign affairs.

There is no law or usage of nations which forbids an American merchant or master of a vessel from engaging by contract any foreign seaman, not even a deserter, to serve as a sailor upon a lawful voyage. Nor is there in England. On the contrary there are many statutes granting rewards and encouragements to merchants to employ, to officers of the navy to enlist foreign seamen without limitation, and to any such seamen to enlist and serve. Such seamen are undoubtedly engaged, in honour, conscience and law, to serve by such shipping paper, and their personal service is a right, and why should it not be called a Debt? It is an undoubted duty. Deserters to be sure, must have contracted inconsistent engagements. They are bound in duty to serve, according to their first contract, and especially according to their oath.

As to electioneering, you and I may as well have nothing to do with it: but if I must vote for Madison or Monroe, I should not hesitate to prefer Madison, as at present informed. It is not worth while for the Federalists to name any man. They are dwindled down to an handful of disciples of Hamilton, and their system of internal government is not much better than that of our present rulers, their ideas of foreign affairs, I fear, are not so good. If our present rulers would not garble the Constitution, and would let us have a reasonable revenue, fortifications, ships and troops, I would not quarrel with them at all.

I hope Wilkinson and Randolph will not meet in the field of honor. I feel so much regard for both of them, that I should be very sorry to hear that either was killed or wounded. . . .

J. ADAMS.

Among the legal papers in the Adams mss. are the notes of testimony taken at the trial of Michael Corbet. They are in the writing of John Adams, and are now printed in connection with his letter as an example of reporting in colonial law cases of which very few examples are to be found, and to complete the record of a cause which Adams believed to be among the most important that had fallen to his charge.

TESTIMONY TAKEN IN CASE OF MICHAEL CORBET.

Mr. FITCH. About the time of the blow; the 2d pistol fired.

Com[mission] for com[missione]rs.

Instructions.

Witnesses.

PETER BOWEN.¹ I have seen all the prisoners on board the brig *Pit Packet* on the 22d April last, in the forepeak. I knew Lieutenant Henry Gibson Panton, lately deceased. He was lieutenant of the *Rose* man of war. He was on board the brig *Pit Packet*, when I saw those men.

Mr. Panton went on board, and I with him.² We enquired for the master,³ who proved to be the person we spoke to. Master, Mr. Panton and I went down in the cabin.⁴ When below Mr. Panton enquired from where the brig came? Master made answer from Calais,⁵ bound to Marblehead. Mr. Panton then asked him *for his bills of lading, clearance and other papers*. Master answered he had no papers except *a bill of health, which he produced*.⁶ Next Mr. Panton asked *how many men he had on board?* Master answered, six before the mast, beside himself and mate. *He then asked for his log book?* Master *produced it*. *Mr. Panton desired the hatchways and scuttles might be opened, and he would send his people down to search for uncustomed goods, or to that purpose*.⁷ Master said it shall be done. Mr. Panton⁸ and I went upon deck, leaving the master in the cabin. *Mr. Panton desired the mate to send all his hands aft. At the same time ordered the Rose's people to go below to search.* The mate said he would send what hands there was aft. *Mr. Panton said he must send 'em all.* Mate said, he could not send 'em all aft, but he would go and call them. Mate went forward. Mr. Panton ordered me to go with him. *Mate called the people, but none of them answered; of*

¹ Midshipman, according to the *supplementary notes*.

Eight leaves have been inserted in the centre of the note book, beginning with this heading. The witnesses are the same, and the notes of testimony differ but little from those in the book itself. Where additional facts are given they have been placed in the notes to the testimony, with the words "supplementary notes" added.

² "The mate threw out a wharp for the boat." *Supplementary notes*.

³ Thomas Power.

⁴ Stanhope, another midshipman, also went into the cabin. *Ib.*

⁵ "Cadiz, loaden with salt." *Ib.*

⁶ "Having it in his hand ready." *Ib.*

⁷ In the margin is written "Mem. Motion by Ad[vocate] Gen[era]l, that he might have a written account prepared before.

⁸ Mr. Stanhope, also, in *supplementary notes*.

which the mate went aft and informed Mr. Panton. *Mr. Panton said he must search for them.*¹ Lights were got. *Mr. Panton ordered me with two of the boat's crew to search in the main hold for the men. We searched. We found nor heard none.* I came out of the main hold and went forward. *Gibson, one of the boat's crew, said to me, there 's a scuttle, pointing to one before him.* We ordered him and Churchill, another of the boat's crew, to unlay. Churchill, taking up the scuttle, called out "*Here they are,*" and desired the men he saw to come up. Brig's people swore they would not, meaning those in the fore peak; and that the first man that dared to approach 'em, they would cut his limbs off. Which one of 'em said this I can't tell. They all spoke to that purpose, at the same time shewing a hatchet, harpoon, a musquet and a fish gigg.² *I then said the lieutenant wanted to see them, and desired 'em, the prisoners, to come upon deck.* They swore they would not. I informed Mr. Panton of what happened. Mr. Panton, hearing it, went forward. I went with him. *Mr. Panton mildly desired the brig's people, the prisoners, to come out,* which they refused to do, swearing they would die in the hold before they would suffer themselves to be impressed. *Mr. Panton then said, he wanted to search the hold, and asked them to let him come down where they were.*³ They repeated to him what they had threatened to me, and shew him their weapons. *Mr. Panton desired a second time that they would come out, adding if they persisted in refusing, he must oblige them.* One and all of them said to Mr. Panton, *if he brought any arms against them, he should be their mark and they would put his lamp out first.* Mr. Panton ordered the Rose's boat to be manned, and sent Mr. Stanhope aboard the Rose for assistance, which I did. I returned to Mr. Panton, and found him talking with the prisoners, endeavouring to persuade them to come out; explaining the folly of being obstinate. The prisoners said several times in my hearing, *if there were fifty men armed, they would not be taken, and told Mr. Panton if he had any regard for his own life, he would let them pass. He said it was his duty, and he could not do it.* They said they knew he was lieutenant and knew his orders, and desired them again to let them pass, swearing and repeating their threats against him particularly. Mr. Panton had a candle in his hand, the place being very dark, *which he gave to one of the prisoners.* Desired they would

¹ "Note," is in the margin.

² Beverley's *Virginia* describes an Indian in a canoe "with a gig, or pointed spear," the butt end being used to push the canoe forward. The modern meaning is "an arrangement of four barbless hooks, fastened back to back, and attached to a hand-line." The word is also applied to a kind of fish spear, a three-pronged harpoon, fastened to a long wooden handle.

³ "For that purpose," in *supplementary notes*.

let him see ¹ *what sort of a place they were in.* One of 'em took the candle and lighted it about where they stood. Mr. Panton said, *he could not see what sort of a place it was, and wanted to go down.* They said *he should not go down,* and if he attempted it, they would ² shoot him. Pierce Fanning presented the musquet and said it was loaded with slugs and primed. Then returned the candle. Mr. Panton, Aye! will you shoot me?, in a joking, cheerful manner added, *I will take a pinch of snuff first, and ordered me to go and see if the boat was come back.* I informed him the boat was just returned. Mr. Peacock, Mr. Stanhope, Forbes the master at arms and the boat's crew. *They all came below.* Mr. Panton asked the prisoners *if they would surrender.* They said they would not. Mr. Panton ordered Mr. Peacock [and] the boat's crew *to go below in the main hold and open the bulkhead where the prisoners were.* As soon as the crew began to work upon the bulkhead the prisoners, all of 'em, at different times, said *they would shoot the first man that made a hole.* One of 'em, which I can't say, advised the others *to shoot the Lieutenant first and divide themselves, two to defend the scuttle, and one the bulkhead.* One of those at the scuttle presented a musquet, the other a fishgig. One from within called out *fire.* Mr. Panton and I having our swords drawn, I with my sword struck the musquet out of its direction at Mr. Panton. Mr. Panton came over towards me and ordered the scuttle to be laid on, which Woodgate, one of the boat's crew did, and stood upon it, to prevent their doing any mischief that way.³ Mr. Panton and I went below to see what Mr. Peacock and the crew had done there. *The master at arms had made an opening with an iron crow in the bulkhead, and having made a small one, one from within presented a musquet thro it at him, to the master at arms, threatening to shoot him.* When we went below the Rose's people had separated themselves, at each end of the bulkhead. Mr. Panton went to the starboard side, where Mr. Peacock and some of the crew were. I went to the larboard side where Forbes, Silley and Sinclair were. The man who presented his musquet at Forbes went over to the other side, upon which Forbes took up his crow and broke off a large plank, and then gave the iron crow to Sinclair and took up his pistol. One within presented a musquet at Sinclair, which he snapped three times, the others calling out to fire, damning the piece for not going off. Silley got hold of the musquet, but by himself could not keep it, those within drawing it from him. Then Silley went to Mr. Panton's side, and almost immediately after I heard the report of a pistol, which Silley at that time said was fired by

¹ "Through the scuttle." *Supplementary notes.*

² "That moment." *Ib.*

³ "Or coming out." *Ib.*

him, without ball, at the man who threatened the lieutenant so hard.¹ Who that man was I can't tell, being on the other side. Mr. Panton all this time frequently *begging of them to surrender, or he must clear his way to them. Some of them again said they would shoot Mr. Panton first, and Forbes, the master at arms next, before they would be taken. Upon hearing the report of a second pistol, I turned about and saw Mr. Panton had been wounded in the throat. I did not see the harpoon. I saw the shape of the harpoon upon the throat, and had [heard?] fired a pistol as I then thot, at the receiving of the wound. Mr. Peacock was with him, and Rainsford, one of the boat's crew, endeavouring to stop the effusion of blood with their handkerchiefs. Then went on deck. With help of two men of the boat's crew, I carried Mr. Panton to the brig's cabin, where he expired in less than two hours. I believe the wound I saw was the occasion of his death.*

Qu. by Mr. Trail. Did Mr. Panton declare he wanted to search for uncustomed goods, when the candle was handed down? He did not at that time.

Q. by me. Do you know what orders Mr. Panton had before he left the *Rose*, and by whom given? No.

Q. Did Mr. Panton ask the master if he had any favour for any one of his crew, and if he had, he would not take him? No.

Q. Did you hear Mr. Panton say he did not intend to have taken more than two, but as they had lied, he would take all four? He did not tell the master so, *but he told the prisoners so, while the boat was gone aboard the Rose.*

Q. Did Mr. Panton persuade the men to go on board the man-of-war? *He told 'em they should have good usage if they would go.*

Q. Did he say, after the candle was moved about, did [he] not say he was satisfied there was no uncustomed goods there? No.

Q. What arms had Mr. Panton and his party, when they went first on board? No body but Mr. Panton had any when they first went on board, and he only a sword.

Q. What arms were bro't on board the brig by the boat, when she came the second time? Cutlasses, pistols, and musquet — how many I can't say.

Q. Any of Mr. Panton's party used any threatening expressions to the prisoners, and what? *They said if they hurt any of 'em with their weapons, they would fire upon them. This was before the first pistol.*

Q. Any of Mr. Panton's party presented their pistols at the prisoners, or made any pushes at them with their swords or hangers

¹ "And had several times snapt his musquet at him, in order to frighten them and make them submit." *Supplementary notes.*

before the fatal blow was given? *They kept their pistols in their hands*, but the men had no swords, and none made any pushes.

Q. *Had all the boat's crew pistols?* I can't say that. The lieutenant, two midshipmen, the first time. There were more than the boat's crew the second time. Boat's crew 7, two midshipmen, four [or eight] more might come the second time. Ten the first time.¹

Q. Were all the persons from the man-of-war below? Not all the time, I believe. They were about the ship.

Q. *Did not the prisoners often say, they did not want to hurt him or his men; they only wanted their own liberty?* Yes, I don't know that I heard 'em more than once.

Q. Whether they begged and pleaded that the lieutenant would let 'em alone? Yes.

Q. When the prisoners said they would die before they would be pressed, did the lieutenant tell 'em, *he did not want to impress 'em, but only wanted to look for uncustomed goods?* No.

Q. *Did the lieutenant ever tell 'em he did not want to impress them?* No, never in my hearing.

Q. Was the opening in the bulkhead such that the lieutenant might see into the fore peak, whether there were uncustomed goods there or not? I don't know.

Q. Did you hear the prisoners say to Lieutenant Panton, they had nothing against his searching, if he would let them alone? No.

Q. Did they take the candle in order to shew him there was uncustomed goods [*unfinished*].

Q. Whether the prisoners took the candle from the lieutenant and moved it about, that he might see there was no goods there? Lieutenant desired them to take it, that he might see what sort of a place they were in.

Q. Lieutenant said he could not see, and wanted to come down.

Q. by Mr. Fitch. Whether the hold was not so full of cargo that they could not stand upright? In the main hold we were obliged to sit down on the salt. I was never in the forepeak.

Q. by Judge Auchmuty. How long between the two pistols? I can't tell. It might be a quarter of an hour, more or less, I can't tell.

Q. by Governor Bernard. Do you know which prisoner gave the wound? No.

Mr. HENRY STANHOPE, midshipman,² of East Chesterfield. Mr.

¹ The arrangement is not clear, but the questioning was intended to bring out the number of men from the *Rose* before and after the second boat came to the brig. See p. 446, *infra*.

² Here occurs a contracted word I am unable to decipher.

Panton was lieutenant of the *Rose* man-of-war. Knows the prisoners; saw 'em 22d April last on board the *Pitt Packet*.¹ I went on board the brig with Mr. Panton. The mate threw a rope to the boat. Lieutenant inquired for master, who was the person he spoke to. We went down into the cabin with him, Panton, Bowen and I. When below Lieutenant demanded of the master the bills of lading and clearance. He answered he had none but bills of health. *Mr. Panton then asked for his log book, which he produced. He then asked how many hands he had on board?* He answered six before the mast, besides himself and mate. Lieutenant went upon deck; the master came up a little after. *Lieutenant told the master he must let his men search for prohibited goods, which the master readily complied with, replying "Very well."* Lieutenant sent Mr. Bowen with two of the boat's crew, to search the hold. Mr. Bowen came up and related what had happened.² Lieutenant ordered me to stay upon deck and look after the *Rose's* boat. Presently Mr. Bowen came up and told me it was *Mr. Panton's orders that I should go on board for assistance.* I went with four of the boat's crew, and acquainted the captain with what had happened. Returned with Mr. Peacock and Forbes, the master at arms, and others, I can't recollect *who, with arms, cutlasses, pistols and muskets.* On my return I know but little of what happened after. When Mr. Bowen came up, he said, there were men aboard *who swore the first man [who] approached them, they would kill.*

Q. by me. *Was the Lieutenant's order to Mr. Bowen and two of the boat crew to search the hold for men or for prohibited goods? I can't say. He told 'em to search the hold, for what purpose I know not.*

Q. by Mr. Fitch. *Was the orders to search presently after he told the master he must search for goods? In a short time after, but the orders were given on deck; what was said to the master was in the cabin.*

Mr. Fitch's Application of the Evidence.

Of the utmost importance to society, that murder should be punished. Shall only state the evidence summarily.

Mr. Panton, an officer of the customs, duly authorized to make searches and seizures. The Commissioners here authorized by act of Parliament to issue commissions. This commission issued to the officers of the navy.

¹ In the margin is written what seems to be the words "learnt it perfectly before I came into court."

² "Mr. Bowen came upon the quarter deck and acquainted Mr. Panton that there were men below, who swore the first man who came near 'em was a dead man." *Supplementary notes.*

As a custom house officer he had authority to go on board any vessel to search. He went on board and demanded papers and leave to search. The master readily consented.

Master's explicit consent to search, a material circumstance. He found the men, and insisted that they should come out, and said he wanted to search that place for prohibited goods.

No threatenings on the part of Mr. Panton. On the contrary he spoke in the mildest and most persuasive manner.

No arms when he went down the hold. Threatening language from prisoners. A pistol. Mr. Panton's disapprobation. The pistol one-half hour before the fatal accident.

Corbet one of the persons that threw the harpoon that killed the lieutenant. They were all active, stimulating one another, and all equally concerned, tho Corbet gave the mortal blow.

Lieutenant was in the lawful discharge of his duty, and the explicit consent of the master for this purpose. Any opposition to him therefore was illegal. The opposition being illegal, he was not obliged to give back. No threatenings on the part of Mr. Panton by which the prisoners could apprehend danger to their lives, tho they had apprehensions of being impressed.

The pistols not fired by him, but *vs.* his direct orders. The last pistol after the wound was given. Peacock saw the blood. Lieutenant Governor says he did not see the blood, till after he fired. The Register has taken it otherwise.

The threatenings of prisoners levelled at Mr. Panton himself. We will put your lamp out first. This shews malice *vs.* him in particular. Why should they single out this person any more than others.

If any person is singled out, it is malice, tho in an affray.

I will consider the apprehensions the prisoners were under and the effect of this upon the evidence. They were under apprehension of being impressed. But Mr. Panton did not say he would impress 'em. Answer, Mr. Bowen said, that lieutenant told prisoners he would take 'em all.

How far this can excuse? Justify, I apprehend, it cannot.

I am considering how far the prisoners' apprehensions could affect the crime. I think it could not affect the crime at all, as he was acting under a legal authority to search for goods.

What effect the firing the first pistol can have upon the crime? I apprehend it can have very little weight, as it was done without order, and the lieutenant expressly disapproved.

Lieutenant unarmed, in such a position and attitude that he could not be in a condition of offence.

Question. Whether these circumstances can soften the crime

down from murder to manslaughter, or whether they are not proof of malice forethought.

Law. A question whether the court are to proceed by the civil law, or by the rules of the common law. I apprehend the crime is the same by both laws; the same essential distinctions in both. The voluntary taking away life, *dolo malo*, with malice forethought. Manslaughter is not by name in the civil law, but the civil law makes the same allowance to the infirmities of human nature. Discretionary in civil law, what punishment to give to sudden killing. By 28 H. 8. and 11 & 12 W. 3. compared, taking 'em together I apprehend no safer rule can be proceeded by than to proceed by the common law, and this has been the practice.

I shall confine myself to the rules of common law. I. H. H. P. C. 16. 17. Question, whether the statute does not restore clergy; the offender is to have his clergy. Lieutenant Governour said some cases that would be manslaughter at common law would be punished by death by civil law.¹

I. H. H. P. C. 457, implied malice, kills without provocation. A bailiff, constable or watchman. No lawful warrant. *Capias distringas*. 9 Co. 68. Same book 458. A bailiff turns etc. Com

. Pew said stand off. Bailiff had hold. Pew killed. Murder. A similarity in these cases. If lieutenant had a right to enter every part of the vessel, he is equally under protection of law as any other officer, and opposing him is at the opposer's peril.

458. Bailiff, Cook. Cook bid him depart. It was manslaughter. In defence of his house, no felony. Tho lieutenant might pursue his authority in an illegal manner, yet it would be manslaughter. No greater effect than that. It must be left to the court whether so great. Should the court think that amounts to manslaughter, I see no reason *vs.* punishing by the civil law.

Our Witnesses.

THOMAS POWER, master of the brig. Q. Did the man-of-war hail you before the lieutenant came on board? The *Rose*² fired two guns and hailed us by a trumpet, and ordered us to lie to; after which Lieutenant Panton³ came on board. He enquired for the master. I told him I was master of the vessel. Then he asked me for my clear-

¹ "A question has been stated by Sir Francis Bernard, whether, (as there is no distinction between murder and manslaughter in the civil law,) the court can allow clergy, if they find the prisoners guilty of manslaughter; that is, whether the court can do any thing but pass sentence of death, and respite execution, and recommend them to mercy?" The reply is given in Adams, *Works*, II. 533.

² "Four leagues from Cape Ann." *Supplementary notes.*

³ "Lieutenant and two midshipmen." *Ib.*

ance. I told him I had none. He replied, you must certainly have some papers. I told him I had no other clearance but a bill of health, and a bill of lading, as it was a foreign port from whence I came, and we took no clearance therefrom. He asked me for the bill of health, which I produced. *He then asked me for a list of my men.* I produced him my shipping book. He asked me if I would walk down [into] the cabin. When he came down *he asked me where my people were.* I told him I did not know. Then he called for *pen and ink*, and for the log book, and took down the people's names, and he ordered some of his party to go and *seek for my people*, and *turn 'em up* from below. Then he asked me to open my lazaretto¹ scuttle for 'em. I told him I would. After he had taken my people's names, he asked me if I had any particular person, that I wanted a favour done him, let him know his name, *he would put a mark against it, and when he came upon deck, he would not take him.* I told him I had one man that was married, and I tho't it would be hard to take him. He said by no means, he would not take no [any] married man, for he had orders to take none that was married. *He asked me if I had any more hands aboard, but what was in the list.* I answered, no. Then he desired me again to tell him if I had any more, for if he *found more aboard, it should be worse for me.*² While he and I were talking, some of his men came and told him that they [had] found out the men, that they were hid in the cabin [fore peak], and went upon deck, and I never saw no more of him, till he was brought up by some of his men out of the hold.

Q. What condition was he then in? He was wounded in the neck on the left side. I perceived an effusion of blood. He might live one hour or an hour and a half. Speechless when he came up.

Q. Were you present when orders were given for the boat to go on board the *Rose* for more men and arms? Declare all you know. I was upon deck when orders came up to send the cutter on *board and bring the cutter properly manned and armed*; that when the cutter returned the *Rose's* men jumped in upon the brig's deck, some with their pistols cocked and some with their cutlasses drawn. Some of 'em enquired, particularly the master at arms, *where the dogs were, and said they would soon have 'em out.* They then went down between decks to the lieutenant, all of them but one man, left to take care of the boat. In a little time afterwards, one of their men came up

¹ While the original meaning of the word was a building or a ship set apart for the performance of quarantine, it was, as early as the beginning of the eighteenth century, applied to a place in the fore part of the ship, between decks, for the stowing of provisions and ships' stores.

² "He then said he would have taken only two, but as they had hid themselves, he would take them all four." *Supplementary notes.*

upon deck to me, said he was sent by the lieutenant (Charles Rainsford, now present in court) for some tools, to cut the bulkhead thro, and if *I refused sending them, that he, the lieutenant, would confine me*. I told him I had none; if they could find any about the vessel, *they may make use of them*.

Q. by Mr. Otis. Did Lieutenant Panton demand a search of your vessel as a custom house officer? No.

Q. Did he demand a search for the men? He did not demand a search for them of me, but ordered his people to go and search for them.

Q. For what purpose did he search? Declare all you know. I imagined it was to impress 'em. He said his orders were to take but two, but as they had lied, he would take the whole four.

Q. Did he say anything to you about his being a custom house officer, or his having a right to search for goods from first to last? No, sir.

Q. Did you ever hear him give orders to any of his people to search the vessel for prohibited or uncustomed goods? No.

Q. What did the prisoner Corbit say, when he first saw the dead body of the deceased in the cabin door? When he came to the cabin door and saw the lieutenant dead, he shed tears, turned about to the marine and said to him, you rascal, you are the instigator of this gentleman's death; and said, you are the person that fired at me.

Q. by the Governor. Did lieutenant behave civilly or uncivilly to your observation? He behaved civilly to me.

Q. by me. What countrymen were your two foremost men, who were not in the fore peak?

Q. Were they inhabitants of Marblehead, and had they families? One had a family in Marblehead; the other was an inhabitant there.

Q. Were these two men both pressed and carried aboard the man-of-war afterwards, the same day? Yes. They were taken away. They were returned before night. I was not required to settle their wages, which I take to be the common practice.

Q. Did one of those two men deliver you the key of his chest and desire you to deliver his chest to his wife at Marblehead, before he went on board the *Rose*? Yes.

Q. by Commissioner. When the lieutenant desired you to unlay the lazaretto scuttle, did he give any reason for the request? No.

Q. by Mr. Trail. Did he ask you what goods you had aboard? Yes. I told him salt.

Q. Did the lieutenant say he should take no Americans? Yes.

HUGH HILL, mate of the *Pitt Packet*. On the 22d April we met a

ship standing out of the bay; between six and seven o'clock they fired the gun, and soon after fired another. We bore down under the lea. They hailed us, told us to bring to, and with our head the same way that they were, until they would send their boat aboard. Their boat came aboard, with the lieutenant, two midshipmen and seven men. The lieutenant asked for the master of the vessel, who was then present. He asked him for his papers. He told him he was from a foreign port, he had only a bill of health, in case of being put into another port, and his bill of lading. Lieutenant asked him for his shipping book, and asked him to go down into the cabin with him. They remained in the cabin seven or eight minutes,¹ and the lieutenant came upon deck again, with the shipping book in his hand. Asked me if I was mate of the vessel. I told him I was. He told me to call our men to answer to their names. I called to 'em to come aft and answer to their names. The two that were upon deck came aft. The lieutenant looking upon the men, seeing no more come but those two, looked steadfast upon me, and said, go, sirrah, and turn your people up, *or I shall take you*. I said, Sir, you may use your pleasure.² At that instant he took up his sword from our companion where he had laid it, drew the sword, and left the scabbard and belt, and went forward, and went down into the forecabin, where the prisoners were. He said, my lads, you had better come up. *I shall take but two of you. You shall have an equal chance*. They replied they would not. I heard a number of voices, can't say they all spoke. They told him they would not be impressed, that they would defend themselves, and told him to keep off from them. *They did not want to hurt him nor any of his people*. He called to Mr. Stanhope, one of the midshipmen, to take four hands in the cutter, and go on board for more men and arms, and to have the cutter properly armed. He then replied to the prisoners that he had often known as tough fellows as they, but by God I will have *you all*. He was down below the upper deck, I was on the upper deck, the scuttle open between us, I leaning with my head over the scuttle. I then went aft. Soon afterwards he sent up to know if the lower deck hatchways was open? I told him that came up, that *all the hatches and scuttles in the vessel were open*, excepting that where the boat stood. Soon after he sent for lights. I ordered the cook to light candles for him. Soon after they got the light the second boat came aboard, with a number of men armed. The master at arms and Mr. Peacock came out of the boat first, the master at arms saying "Damn the rascals, where are they?" *I 'll have them out*

¹ In five minutes, say the *supplementary notes*.

² "Then his people came and told him the brig's people was down in the fore-cabin in the peak." *Supplementary notes*.

immediately. The master at arms went down forward, Mr. Peacock following, who ordered his men to follow him. They went down. Soon after there came a man up, asked for the master, told him he wanted the tools belonging to the vessel; if he did not deliver 'em, the lieutenant would confine him. He told him he did not know where they were; if they could find 'em they might take 'em. They found an adz and a crow bar, and went down into the hold again with the tools. In a short space of time I heard a pistol go off. About seven or eight minutes after, one of the people who came from below told me that one of our men was wounded. In eight or ten minutes¹ after, I heard a second pistol go off, and in four or five minutes after, Mr. Peacock came up and hailed the *Rose*, and told 'em for God's sake to send the doctor on board, the lieutenant was wounded. They bro't the lieutenant to the fore- and afterscuttle, and I lent a hand to carry him down into the cabin. The doctor came to him. After the doctor had been with the lieutenant, he came out of the cabin. Some of the people asked him to dress the wounded man (meaning John Ryan). He answered, let the rascal bleed and be damned. He ought to have a brace of balls drove thro' his head, the man remaining in his gore till he was carried on board the man-of-war. After they had placed sentries over Corbit, James Silley, a marine, told Mr. Newcomb and me, that he fired a pistol in Corbit's face,² thinking to make him retreat. Some of the people there, after the Lieutenant was dead, made mention that the lieutenant was a custom house officer. Our master asked me if I had seen his shipping book. I told him, no, and went and asked the midshipmen, if they had seen the shipping book. They told me, no. They said they would search the lieutenant's pockets for it. They went down into the cabin, and took his papers all out of his pockets in my presence. The shipping book was not in his pocket. When the mate of the *Rose* came on board to search, the Monday following, *viz.* the 24th, he brought a deputation as a custom house officer, and shew it to Captain Power. Captain Power said he need not read it: the vessel was all open, he might search. There was no parchment in his lieutenant's pocket when his papers were taken out. I examined all his papers particularly to find the shipping book. The commission being shewn him, he says it was not there.

Q. Did Lieutenant Pantton, deceased, from the time of his coming on board the *Pitt Packet* to the time he fell, make any demand on Captain Power in your hearing, or of any other belonging to the *Pitt Packet*, to suffer him to search the vessel as a custom house officer for uncustomed goods? No.

¹ Six minutes, say the *supplementary notes*.

² "By order of the lieutenant." *Ib.*

Q. Did the lieutenant, with his party, from the time of his coming on board the *Pitt Packet* to the time he fell, conduct him and themselves, in all respects, merely as a press gang? Yes. I understood it so, and had very good reason, when he told me he would take me on board the man-of-war, if I would not turn the men up.

Q. How long was the lieutenant on board the brig before he fell? It might be two hours, as near as I can judge.

Q. What part of those two hours was taken up in the forcible attack upon the fore peak, where the prisoners had retreated? The whole time, excepting what was spent with the captain and him in the cabin and on deck, what might be ten minutes in the whole.

Q. With what weapons was this attack made, and what methods used by the lieutenant and his party to break into the forepeak? Declare all you know. Answer. Crow, axe, pistols and cutlasses, I suppose, that were carried down.

Q. What was said by the officers or people of the man-of-war to the two of your men, when they were ordered into the boat, in order to be carried aboard the *Rose*? I don't know. I was n't upon deck.

Q. What did the officer find on the 24th? He found [in] our stores some bottles of wine and some loose lemons, five or six hundred, in a barrel. Nothing else. He seized the vessel; put the broad arrow on the mast.¹

Q. by Corbit. What did Corbit say when he first came up and saw the lieutenant? And what did I say, and how behave? Through my persuasion he came up. I told him it would be much better for him. He asked me if I would advise him for what I thought was best for him. I told him I would not give him advice to his prejudice. He came up and went into the cabin. Seeing the corpse, tears came from his eyes. He turned round and saw the soldier that fired the pistol upon him. Said, you are the rascal that is the occasion of this gentleman's losing his life. He said in the forepeak, he did not believe the lieutenant was dead.

JOHN RONEY, mariner on board the brig. The cutter came aboard, and lieutenant and two midshipmen, and seven men. Lieutenant inquired for the master. Lieutenant went below with the master. He came up with the shipping book in his hand, and told the mate to call the people. The mate said there were two forward and called 'em accordingly. Lieutenant, looking upon the shipping book called Michael Corbit. Then he called John Roney. I answered to my

¹ The broad arrow is still used by the British Board of Ordnance, and is placed upon government stores.

name. One of the *Rose's* people came and told¹ the lieutenant the men were down in the fore peak. Lieutenant went forward immediately; took his sword drawn along with him. Lieutenant asked the prisoners to come up. The prisoners answered, they would not. Lieutenant made answer, he would have them up. They said they did not want to hurt him or his people; they wanted nothing but their liberty.² Some time after the lieutenant bid one go aboard the boat and fetch more men, and bring the boat armed, and the master at arms. When the cutter returned again I hove her a rope. They had a great many arms and there was Mr. Peacock and the master at arms. The master at arms took a pistol in one hand, cocked, as I thought, and a cutlass in the other. He jumped aboard the brig and says, By Jesus, I'll have these dogs out; immediately speaking again, "where is these buggers?" He went down the forecandle with his pistol and cutlass. I did not hear any more of him for about thirty minutes.³ First thing I heard was the report of a pistol. Mr. Stanhope, standing sentry over the forecandle scuttle, told me one of our people was wounded. About five or six minutes afterwards I heard another pistol go off. About four or five minutes afterwards I heard the lieutenant had got a deadly wound.

JAMES MCGLOCKLIN, cook on board the brig. I was down in the steerage, and the lieutenant desired me to get him a light. I did. Desired me to shew him the way twixt decks forward. I shewed him the way, and carried the light in my hand. Lieutenant asked the prisoners if they would come up. They replied they would not. He said it would be better for 'em; *if they would not, he would make them*. They said they would not. They were freemen, born free and would not go aboard a man-of-war. He said, he would have 'em. *For men he came for, and men he would have*. Lieutenant said if they would come up, he would not hurt any of them. *They said they would not, they would stand in their own defence; they did not want to hurt nobody*. I went aft in the steerage again until the boat came on board [the] second time, with more men and more arms. Lieutenant called for another light. I got it, and carried it forward to him. Heard him say that he had seen as stout men as them come out very easy before now. They replied to him, they were none of them [that] sort of men. He said to them, I'm *the man that will bring you out*. Then I went aft. Lieutenant called after me to shew

¹ "And said, one of our people had drove a pair of grains thro his trousers." *Supplementary notes*. A "grains" is a fish spear with two or more "grains" or prongs.

² "Then he ordered a man to hail the ship, and a midshipman did hail her, and I got him the trumpet to hail her." *Ib*.

³ Twenty minutes, in the *supplementary notes*.

him the hatchways, which I did. Then the master at arms came directly with his cutlass and pistol, and asked me for a crow bar. I told him I did not know where to find one. He looked and found a crow bar.¹ Then says he, where 's these buggers, I 'll have them out. Lieutenant and he and the rest of their people went down in the hold, and I went away into the steerage. Presently after I heard a pistol go off. One of the man-of-war-men came up and told me, one of our people was wounded. Soon after, four or five minutes, I believe, I heard another pistol go off. Presently I see the wounded man, John Ryan, come out, crawling over the water casks, asked me to help him; begged of me to get him water,² he was faint, etc. Soon after I heard the lieutenant was killed.

Q. Did you ever hear lieutenant, or any of his party, demand leave to search for goods, or say anything about it? No.

Q. Did they behave merely as a press gang? Yes, and I never suspected they had any other design. I saw lieutenant have his sword.

EDWARD WILKS, a private marine on board the *Rose*. Q. Did you place the sentries over Corbit, on board the brig after the lieutenant was killed? Yes.

Q. How did he behave, and what conversation had you with him about the unhappy accident? The sentries were planted, and I went down to see if every thing was quiet. I found disturbances on both sides. I begged of the prisoners at the bar, Ryan excepted, to behave in a better manner, for the lieutenant was killed. They made me answer, that they did not believe it, for they did not mean any harm to any one, without it was them that came armed against them; and further told me, that if I would lay down my arms, they would lay down theirs, and I might be welcome to eat and drink with them. I made an answer, that I did not choose any thing of the sort. Corbit desired me to go to Mr. Hill, the mate, and ask him, as to send 'em something to stop the wound, for he was shot. Accordingly I went up. He went down.

CHARLES RAYNSFORD, a seaman on board the *Rose*. Came [in] the first boat, with the lieutenant, and was down in the brig's hold with him. In going down the hold, Mr. Peacock was the head officer, and the master at arms. There was no orders given to break open the bulkhead. The prisoners said, the first man that made a hole there would be the death of him. Presently after a hole was made. The prisoners never hurt any of 'em that made it, tho' the hole was large eno' to have hurt 'em with their weapons. Some time

¹ "By the water-cask, and carried it down in the hold." *Supplementary notes*.

² "And clothes." *Ib.*

after, the lieutenant came down. When he came down I did not really see him. He (lieutenant) took my pistol from me. Mr. Peacock was close by. I made answer, I can't stand here with a naked cutlass only. With that I drew back. Lieutenant ordered some body to go upon deck, and fetch an axe. I went up to the captain, Power, and I asked him for an axe. I saw the first pistol that was fired, run close to his face and fired. Corbit said, Gentlemen, you have wounded me. Corbit asked lieutenant, by what authority he fired at him.

Did you hear Mr. Panton say he wanted to search for uncustomed goods? No. I did not.

Captain ROBERT CALEF. 30th of April Mr. Bowen came to my house. I said to him, an unhappy accident happened on board the brig. How did it happen? I was as nigh the man that killed the lieutenant as the lieutenant was when he was killed. I asked him how the affair was. He told me the man had given him all the fair warning imaginable, and it was the lieutenant's own fault; and they had talked together, the lieutenant and prisoner, while the boat was gone for.

Mr. WILLIAM PEACOCK. [Midshipman.] Mr. Panton was lieutenant of the *Rose*. I knew all the prisoners aboard the *Pitt Packet*, 22 last April. At my first arrival on board the brig, I inquired of the mate, where Mr. Panton was. He said, down in the fore hatchway. I went down directly, followed by the boat crew. I inquired the cause of the disturbance. *He told me¹ that all the arguments he could make use of,² the brig's people, four in number, were down the fore peak, and said they were resolved to die sooner than be pressed on board a man-of-war.* Mr. Panton then ordered me down the main hold with the boat's crew to force down a bulkhead which parted the main from the fore hold. I went down directly, and *ordered the people to break down the bulkhead, which they began.* The brig's people, the prisoners, from within threatened to kill the first person they saw. *Upon a hole's being made by our people in the bulkhead, they presented a piece thro that hole, and snapped it three different times,* the people in the mean time breaking the bulkhead down,³ *so that in a little time I could discern four persons differently armed with gun, fish gig, axe and harpoon. Still striving to hurt our people as much as lay in their power.* Mr. Panton then came down and ordered the people to desist from breaking the bulkhead down, till he had spoke to those within, the prisoners. *He represented to 'em the folly*

¹ "The people were so obstinate that," etc. *Supplementary notes.*

² "Were to no effect." *Ib.*

³ "So much down as to give an imperfect light of the place." *Ib.*

of persisting against a superior number, acquainting 'em with the impossibility of their escape, and promising them good usage, if they would come out voluntarily. They told him they would not, and that they knew him to be a lieutenant, that the men acted by his orders, and that the first man that offered to touch the bulkhead, they would do for him, meaning Mr. Panton. One of our men, then hearing this threat, fired a pistol at the man who told Mr. Panton so, loaden with powder only; which must be true, as it only scorched his upper lip and made it bleed, in order to intimidate him, as the man declared. James Silley [was] the man.¹ The man Corbit said to Mr. Panton, *see what one of your men has done, pointing to his lip*. Lieutenant made answer, *it was not done by his order*; when you, he meaning Corbit, *come on board the Rose he would shew him the man that did it, in order, as I suppose, to get satisfaction*.² Lieutenant then asked them if they would come out, and promised them good usage again. They said, they would not, and that the first person that offered to approach them, they would kill him. Michael Corbit was the chief speaker, and said this in particular; what he said, the rest generally joined in and assented to. Lieutenant then gave new orders to break down the bulkhead, which our people did as well as they could, being interrupted by the prisoners.³ Immediately after, Mr. Panton gave orders to stop a second time, and asked them if they would come out again. They said, no. Lieutenant then asked one of 'em to lend him his axe, that he might beat the bulkhead down the sooner, in a joking manner. He within answered he'd lend it to scalp him. Lieutenant then ordered to break down the bulkhead, which we were just going about, when Corbit, the prisoner at the bar, *struck at Mr. Panton with his harpoon*. Mr. Panton immediately said after the stroke,⁴ Peacock, "*the rascal has stabbed me thro' the jugular vein*" I immediately fired my pistol at the person who wounded him, who was Corbit.⁵ I saw his blood spout out amazingly before I fired my pistol.

Q. by the Governour. In what posture was Mr. Panton? He was sitting on the salt opposite to Corbit, and was not any ways attempting to force an entry.

Q. by Commodore Hood. I distinguished Corbit by the blood on

¹ "Upon which the man whose face was scorched asked," etc. *Supplementary notes*.

² "And immediately took the pistol from the man, and gave strict orders, no one should fire without his directions." *Ib*.

³ "Who kept presenting their piece and striving to hurt our men with their other weapons." *Ib*.

⁴ "He stood in his former position for a few seconds." *Ib*.

⁵ "Mr. Peacock ran, and bound his neck with his handkerchief." *Ib*.

his face. When Silley fired the pistol, lieutenant took the pistol from him and gave orders that no one should fire without his orders.

Q. by Lieutenant Governor. Did the prisoners discover that they heard these orders? I did not see any difference in their behaviour. I can't tell whether they heard. There was a noise. I was quite close to him.

Q. by Judge Auchmuty. How long between the two pistols? Half an hour; I am sure it was.

Q. by Governour B[ernard]. Did Mr. Panton ever give orders that his men should fire at the prisoners? No, sir, never.

Q. by me. What number of men and what arms? *Ans.* Eight came with me and Mr. Stanhope. We brought two musquets, four pistols and four cutlasses.

Q. by me. What threats were used by any of the lieutenant's party to the prisoners? The firing of the pistol, and damning one another, but no other threats that I heard. Mr. Panton might say they had better come out by fair means.

Q. Did you draw up your first deposition yourself?

Q. by Judge Auchmuty. Have you any doubt upon your mind but that he intended to impress the people, or not? No, sir.

Q. by Lieutenant Governour. Whether the other men were impressed? They were carried on board the *Rose*, but immediately discharged.

Q. Did you hear the prisoners say to lieutenant, they did not want to hurt him or his men? I heard Corbit say to Mr. Panton, see here what is done? What right had your men to do this?

Q. Did you hear the prisoners or any of 'em say to lieutenant, or any of his party, I can fly from you no further. I must defend myself. They said they were resolved to defend themselves.

Q. Did any of the prisoners say they were no deserters, and lieutenant could have no orders to impress them in time of peace? No, not as I heard.

[JOHN] FORBES, master at arms. I knew Lieutenant Panton very well. I know all the prisoners very well. Saw 'em first on board the *Pitt Packet* belonging to Marblehead.

I was called out and ordered to go aboard the brig to Mr. Panton's assistance, which I did. I walked forward to the starboard side of the forecastle. I heard one of the brig's crew call out from below "Come on you dogs, here we are." I took off my coat and threw it upon the forecastle, then went down below, one of the boat's crew with me with a light to shew me the bulkhead, which I saw by the light. I laid my hand upon it. I said there was nothing to be

done without an iron crow. I went up the main hatchway to look [for] one. I met the lieutenant.¹ He asked me where I was going. I told him I was going to look for an iron crow. I tried aft and found one and carried it down to break open the bulkhead. Mr. Panton joins (?). Lieutenant at the same time told me they were well stowed forwards. I gave two strokes at the bulkhead with the crow. One of the crew, whom the rest called Corbit, by his voice I judge, said ² that was all they wanted.³ Five or six blows made a hole in the bulkhead, so as we could see them and they us. Lieutenant crawled along forward.⁴ As soon as the prisoners see him they in general threatned him with death. And one of 'em, whom the rest called Corbit, said, Mister lieutenant, I will kill you first, *and you may be sure of death, if you don't go about your business*, and at the same time presented a musquet at Mr. Panton. Others of the prisoners within presented a fish gig, harpoon and axe at the lieutenant,⁵ without the least abuse from that gentleman, the lieutenant. I, seeing 'em present their weapons towards the lieutenant, was afraid they would kill him. I called out to 'em and desired 'em not to point their weapons to kill so good a gentleman as what that was, for he meant them no harm; and if you *do not leave off pointing your weapons at him, I will fire among you*, which by a rally I made upon them I drew them to my side, and I frequently presented my pistol to 'em. It is proper a man should preserve his own life. One of the prisoners, the rest called Ryan, was in the larboard wing with a fish gig in his hand. He hove it at me the length of his arms. Not doing the damage they would have him, Corbit cried out, kill the bugger, and accused him of cowardice for not doing it. Corbit ran to the larboard side where he, Ryan, was, and caught the staff in his hand, and he took hold of the staff and the grain came off. Upon Corbit's return to the other side, he took a musquet from another and snapped it at ⁶ one of the boat's crew three times ⁷; then went to his own quarter again. The opening I made was so big that the wounded man came out. It was all down to a piece of a plank,⁸ which Corbit

¹ "Who ordered him to go down and force open the bulkhead." *Supplementary notes*.

² "Called out, come on ye dogs." *Ib.*

³ "To which Forbes answered he expected to get four or five dollars for the vessel yet." *Ib.*

⁴ "Forbes contrived to knock down the bulkhead towards the larboard side. The brig's people all the time threatning to murder the lieutenant." *Ib.*

⁵ "Swearing and repeating Corbit's threats without intermission." *Ib.*

⁶ Sinclair is named in the *supplementary notes*.

⁷ "And afterwards at Forbes, damning it for not going off." *Ib.*

⁸ "About midships." *Ib.*

made several attempts to pull down, swearing at the same time he wanted room to the lieutenant.¹ One² of the boat's crew with me made two or three attempts to pull this plank down; but a musquet being presented at him by one of the prisoners he caught hold of it; but not being able to keep his grip, he flew over to the side where the lieutenant and the rest of the gentlemen were [and] took up a pistol. Corbit seeing that, dared him to fire. He told him he would, if he did not put his face back from the bulkhead. Fire if you dare,³ I will kill the first of ye. Then I heard a pistol go off. Silley, who fired it, came over to my side. Lieutenant called out, but can't say what he said. He seemed to speak hot. Silley came over to my side with a loaded pistol in his hand. I know there was priming in it; thus I conclude was loaded. The prisoners after this were very hot, pushing their weapons at us. I called out to the lieutenant and said, *I must be obliged to fire to save my own life.* He called me by my name, and forbid me to fire more than *once*,⁴ or *else I'd have shot every man of them.* At the same time the lieutenant demanded Silley's pistol from him. Lieutenant thinks Silley as hot as I was. Blew out the priming and gave it to one of the boat's crew. The next thing I observed, two or three minutes after, was Corbit darting out a harpoon through the bulkhead, where the lieutenant used to sit. I did not see the lieutenant at that time. In a moment, as quick as possible, I heard a pistol go off. I don't know who fired it. The pistol was followed by a groaning in the hold among the prisoners. Corbit said, he was shot thro the shoulder, and lost the use of one of his arms. Ryan said the same afterwards. I advised 'em to come out and get our doctor, that they might not bleed to death. Corbit said he would not, that he would die there, and bleed to death. I advised Ryan to come out, and helped him out, with a pistol in my hand, cocked and [presented?], they with their weapons threatening to kill me if it came in. They admitted me to come to the bulkhead. One of the boat's crew came down and said that Mr. Panton was dead, the first I heard or tho't of it. I said to Corbit, you are the rascal that has killed that gentleman, and you'll be hanged for it. He said he would kill me next, for he believed I was an officer of marines. I told him, let me be what I would, I would have the satisfaction of putting him in irons by⁵ and by both legs. So I would, and if there had been twenty-five, I would

¹ "Mr. Panton hearing that said, aye, my lads!" *Supplementary notes.*

² Silley. *Ib.*

³ "I will not go back." *Ib.* The speaker is, of course, Corbit.

⁴ "Which Mr. Panton strictly forbid him to do upon his peril." *Ib.*

⁵ A word omitted.

have put 'em all in. Ay, says he, you are master at arms. If I had known that, I would have killed you long ago.

Q. by Governour. Was the hole where the lieutenant was wide eno' for the lieutenant to get thro? I can't think it was. The largest breach was at the larboard side. A man might have got his head thro. I saw Corbit make a push with the harpoon, but could not see the lieutenant by reason of a trunk.

Q. by prisoner Corbit. How could you see when there was no light, the scuttles being down? There was no light among 'em, but we had lights, and the planks were all clear where we were. The light shone full upon them.

Q. by Mr. Otis. Had lieutenant a sword, or pistol, at the time he fell? To my knowledge, I never saw any weapon in his hand but a snuff box.

Q. Do you remember Corbit's requesting, intreating the lieutenant, to go about your business and stand off? They said, go about your business and stand off; their constant cry was, if we would not go about our business, they would kill.

Q. Did Corbit and the rest frequently say, he did not desire to hurt him, if he would go about his business? Not to my knowledge.

Q. Did you consider yourself as searching for goods, or as one of a press gang? When the lieutenant said, they were well stowed forward, I thought there were goods. I am not to be a judge of my officer's business. I imagine it was for seizing smugglers as well as anything else. I am not a judge whether lieutenant would have pressed them. The latter end they behaved so rough and turbulent that the lieutenant, I believe, would take some of 'em on board the *Rose*.

Q. Did you hear lieutenant say he would press 'em? I did not, that I remember.

Q. Did you frequently hear the prisoners declare, they would die before they would be impressed on board a man-of-war? I heard Corbit say, he would not go on board a man-of-war. At the time when he said he was wounded, he said he would die before he would go aboard a man-of-war. They said that all they had in the world was there, and they were defending it.

Q. Did you hear 'em say, they were in defence of their liberty? They might say so; I can't say I heard it. There were many words said that I don't remember.

Q. Was you in the fore peak? I never was there.

Q. Do you know of any uncustomable goods that were found in this fore peak by any of the party, or [in] any other part of the vessel? Not that ever was found to my knowledge.

Q. Did Corbit express great grief and concern when he was assured that the lieutenant was killed? No.

Q. by the Governour B[ernard]. Was it after Corbit knew of lieutenant's death that he said he would kill you? Yes.

Q. by Governour. Do you believe the prisoners heard the lieutenant forbid Silley and 'em to fire? I do.

Q. by Governour. Did you hear Corbit complain of the first pistol, and the answer? Yes. The ball missed Corbit, if there was one in it. Corbit said to lieutenant, see what your men have done. Well, says the lieutenant, come out, and you shall have what satisfaction you please.

Q. by Mr. Otis. Are you sure there was but one pistol discharged before the lieutenant fell? But one.

Q. by prisoner, to Mr. Bowen. Did the lieutenant draw his sword and thrust it down several times into the place where the prisoners were? No.

Q. by Otis to Bowen. Did you consider yourself with Mr. Panton as searching for goods, or as a press gang? *Ans.* As searching for goods. First I searched for men, and then for goods.

Q. Whether any of the party searched the fore peak for goods after the men were out? I don't know that they did. Peacock and Stanhope. No. We went on board the *Rose* before the men were out.

Q. to Bowen, Peacock and Stanhope. Did you hear 'em frequently say they did not want to hurt 'em if they'd leave 'em? Bowen did; the other two did not.

Q. Mr. Bowen. I believe at different times I might hear 'em all say that [they] would kill, etc. Corbit said he would put his lamp out first, and the other might say to the same purpose. I believe some of the others did. It was not always said with the same voice. I can't tell who took the candle from the lieutenant. I am certain Corbit said he would shoot with gun loaden with slugs and primed, and they all joined in it. Pierce Fanning presented the musquet, but who the fish gig or, who cried fire, I can't say. I saw nobody have the musquet but Simms. The same man presented it at Sinclair and snapped it three times. *Corbit said he knew him to be a lieutenant.* Can't say that any other did. There was a noise.

Q. by Mr. Fitch. Whether Mr. Panton had sword, or pistol, or any arms while in the hold — main hold? He came down unarmed, without his sword. He took the pistol from Silley some time after, as mentioned before. Silley had loaded it, or it [might] have been another, for the lieutenant blew the priming out, and gave it to one of the crew. He had time to go from side to side between, for Mr. Panton called him to him.

Bowen see him take the pistol from Silley, but did not see him blow the priming out. Stanhope saw him with a sword at the scuttle, but not in the hold. I did not see him.

WILLIAM PETTYGREW. Physician. I saw the body before it was buried, soon after the vessel came up to the wharf. He came by his death, I suppose, by the wound he received in his neck, about three inches long and of a triangular figure; cut the carotid artery and jugular vein. I suppose three inches in depth. There are two jugular veins on each side of the neck.

Q. by me. Are the artery and vein three inches deep? I suppose it must have penetrated three inches, for the natural elasticity of the artery and vein would have given way.

ROBERT BRICE, surgeon's mate. Knew the lieutenant. I saw him about half an hour before he died. His death, I apprehend, [was] occasioned by a triangular wound in the left side of his neck. It must have been the immediate occasion of his neck [death]. The two jugulars, on the left side, and the carotid artery were cut through. The wound went down in an oblique direction. There is an external and internal jugular vein. One could have known the wound by the instrument that gave it. There must have been force used in drawing it back, as the surface of the wound was lacerated.

JAMES SILLEY, a private marine. I went on board the brig in the boat — the second boat. I was one that rowed. I went immediately down in the hold with Mr. Peacock and the master at arms. Mr. Panton ordered us to open the bulkhead.

Q. by Governour Bernard. Did you fire a pistol? Yes, I fired a pistol. The prisoners ordered us upon our peril not to approach the apartment; if we did, they would kill us. They 'd be the death of the first man that should attempt to break in there. The pistol I fired was loaded with powder only. It was given to me, I don't know by whom, for a pistol only with powder. I did not load it, and don't know [who did]. He don't know by whom it was given to 'em, but believe it was the master at arms. I fired it at the time when I was taking hold of the musquet that was presented thro the bulkhead. I don't know that I presented it at one any more than another. I had no reason for firing it, but in confusion, with no intention at all. I caught at the musquet, and fired at the same time with the other hand.

Q. How near was the mouth of your pistol to Corbit's face? I don't know. It must be very nigh him, I believe, by the explosion. Corbit said, this is not good usage. Mr. Panton said he would shew him the man when he came on board. Then a cartridge was given me by Sinclair, and I loaded the pistol again. The musquet

was pointed thro the bulkhead again. I seized it and kept it in my hand for above two minutes, but the prisoners got it from me, two of 'em. I soon went over to the larboard side where the master at arms was. The lieutenant demanded me to give him the pistol; accordingly I did. I then assisted the master at arms in breaking down more of the bulkhead with pretence of getting in. The prisoners then desired us to keep off upon their peril, for they would not be pressed. I remember Corbit very well. The others said, keep clear, gentlemen, at your peril, for we will not be pressed. Corbit then said, you lieutenant, stand clear; if you don't I'll be the death of you. The lieutenant made answer, you may depend upon it, if you kill any one, you'll be hanged for it. They, Corbit, then often attempted shoving thro with the harpoon, the whole of 'em desiring us to stand clear. Soon upon it I heard another pistol go off, and the cry of a man. Looking about I saw the people all going out of the hold, and no one there but I and the master at arms. Some time after Getsus [?] came out and said the lieutenant was dead. The prisoners said it was no such thing.

Q. Mr. Panton said he gave no orders to fire.

Q. by prisoners. Did we not tell 'em we wanted nothing but our liberty, and not to hurt any of their people? I heard some of them say, they wanted nothing but their liberty, and would hurt nobody if they did not hurt them.

Q. Whether some of the boat's crew did not say, if we did not come out they would blow our brains out, or shoot us? I believe there was words of the kind passed by both sides—a great deal of that.

Q. Did not I give the prisoner a piece of bread, and say that I wanted not to hurt him, or any man? Yes.

Q. by me. The lieutenant said he had a deputation to search, and would search there; that also the prisoners said there was no prohibited goods there.

Q. Did the lieutenant, or any of his party, search in any part of the main hold for prohibited goods? I did not see 'em.

Q. Did you apprehend your business was to search for prohibited goods or to impress men? I understood that I came on board in order to help Mr. Panton search for prohibited goods, or to impress men, as he gave orders.

JOHN BEMBRIDGE.

Witnesses for the prisoners: Thomas Power, master; Hugh Hill, mate; John Roney and James McGlocklin, mariners, on board the *Pitt Packet*.

Dr. GREEN then read the following paper:

SOME NOTES ON PIRACY.

Few persons of the present day are aware how extensively piracy prevailed two centuries ago. There was no part of the high seas that was free from the depredation of roving robbers. At times they threatened towns on the coast, and at others they attacked ships on mid-ocean; and they seem to have followed their lawless pursuits at will. When caught, there was little delay in bringing them to trial and securing a conviction; and trivial technicality in forms played no part in reaching results. At times there were multiple executions, and in the community there was no morbid sentimentality shown for the miserable wretches. Not the least of their torture was sitting in the meeting-house on the Sunday before execution and listening to their own funeral sermons, when the minister told them what they might expect in the next world if they got their just dues. On June 30, 1704, six poor victims were hung, on the Boston side of the Charles River bank, for piracy and murder; and there was a great crowd to witness the tragedy. Among the spectators on this occasion was Chief-Justice Sewall, one of the judges of the Admiralty Court which had convicted the pirates, who did not think it beneath his dignity to be present. It was then considered a public duty to invest the scene of execution with as much awe as possible, and it was thought that official station would emphasize this feeling.

The following extract from "The Boston News-Letter," August 21, 1721, shows how in early times piratical craft, heavily manned and carrying many guns, sailed the high seas and pursued their unlawful calling. The vessel was taken somewhere in the Sargasso Sea, off the coast of Africa.

These are to Certifie all Persons concerned that on the 7th Day of May last, William Russel Master of the Ship Mary of Charlestown, in his Voyage from Madera to Surranam in the Lat. 22 Deg. and 27 N. and Long. 25 and 27 W. from London was taken by a Pirate Ship upwards of 50 Guns, Commanded by Capt. Roberts, about 300 Men, who robb'd him of part of his Cargo, and Forced away from him two of his Men, against his and their own consent, viz. Thomas Russel born in Lexintown near Charlestown and the other Thomas Winchol born in Portsmouth, New-Hampshire in New England.

I have been led to make these introductory remarks on account of a manuscript recently given to the Library by Mrs. William B. Rogers, eldest daughter and sole surviving child of Mr. James Savage, who was for more than sixty years a member of this Society and for fourteen years its President. It consists of an extract from a letter written by her uncle William Savage to her father, dated at Havana, December 31, 1818, giving an account of the capture by pirates of the ship *Emma Sophia*, off the Florida coast, of which vessel he was supercargo. Since the receipt of the paper from Mrs. Rogers I have found in the "Boston Daily Advertiser," February 3, 1819, a fuller version of the letter; and for that reason I here follow the copy as given in the newspaper. Anything that relates to Mr. Savage or his family will always be in order at these meetings. At the unveiling of his bust in this room, on April 12, 1906, Mr. Adams, the President, said that "with the single exception of Mr. Winthrop no member of the Society since its beginning has left upon it so deep and individual an impression" as Mr. Savage has.

The account appears on the second page of the Advertiser, under the heading of "Marine Journal," as follows:—

MEMORANDA.

 The vessel mentioned in yesterday's paper, as having been plundered off Florida, is the Hamburg ship *Emma Sophia*, Capt. Frahm — the supercargo is Mr. William Savage, of this town. It is stated in the Charleston papers that she is insured at Lloyd's.

We have been favoured with the following extract, giving further particulars:

Extract of a letter from a gentleman of this town, supercargo of the ship Emma Sophia, dated Havana, 31st Dec. 1818.

On Saturday 19th inst. between the Bahama Bank and Key Sal Bank we were boarded and taken possession of by a small schr. of about 30 tons, having one gun mounted on a pivot and 30 men. She manned us with twelve men, Spaniards, French, Germans and Americans, and carried us towards the Florida coast. Being arrived on the coast nearly opposite to Havana, the privateer went in shore to reconnoitre, and our ship lay off and on. Next morning she returned with two small vessels, a schooner and sloop. We then all four steered over the reef towards the small islands, and on Tuesday afternoon were brought to anchor in a little harbour

formed by the Florida isles and the Martyr's Reef, as snug a hole as buccaniers would wish. They had seen no papers, but those of the ship and the Manifest, but the latter was enough, and they asked not for invoices or bills of lading. As soon as we anchored, they threw off our boats, took off the hatches and began to plunder the cargo. They loaded their two small vessels and another that came in next morning, besides taking our valuables on board the privateer. Having filled their vessels with linens and nankins, we had still many left, for our ship was full when we sailed from Hamburgh. Till Wednesday noon, our cabin had been respected, but then they came below and took packages of laces, gold watches from the trunks and other valuable goods. Every man had a knife about a foot long, which they brandished, swearing they would have money or something more valuable, that was concealed, or they would kill every soul of us, and they particularly threatened me. I appealed to their captain, told him I was in fear of my life, and went with him on board his privateer. He said he had no command, the crew would do as they pleased, that I need entertain no fear of my life, but had better tell at once if any thing was concealed. I told him there was not. After my return to the ship towards night, the pirates left us for the first time, and we hoped they had done with us. But next morning another sch'r and sloop appeared in the offing, and the privateer and one of the loaded sloops went out to meet them. They all returned together, the privateer anchored, and a boat's crew came towards us. I attempted to go on board the privateer to see her captain, but was ordered back. When they came on board, they said they had come to find where the gold &c. was, and that if we would not tell, they would hang every man of us and burn the ship. Davis, the spokesman, drew his knife and swore, that every man should die, unless he found the money, and first he would hang the supercargo. He called for a rope, which he had brought on board, fitted with a hangman's noose, sent a man up to the mizen yard and rove it and brought the nook down — and one man held it, and another stood ready to hoist. Now, said Davis, tell me where is the money, where are your diamonds, or I will hang you this minute. In vain I repeated I had nothing more but my watch, which I offered and he refused. — Once more, said he, will you tell? I have nothing to tell, said I. On with the rope, said the villain, and hoist away. The fellow with the noose came towards me, and I sprang overboard. They took me up, after some time, apparently insensible. They took off all my cloaths, and laid me on my back on deck, naked as I was born, except having a blanket thrown over me. Here I laid five hours without moving hand or foot. Meanwhile they robbed us of every thing of the least value.

Against me they seemed to have a particular spite, stealing even the ring from my finger, and all my cloaths from my trunks which they sent on board the privateer.

At night they left us, but returned once or twice, for a few minutes, to see how I was. That night the privateer, with two or three of her convoy went to sea, and next morning, Christmas day, we got under way. — Having taken good notice of the courses steered in coming in, and keeping the lead constantly going, we found our way out to *blue water* without much difficulty, and next morning, 26th, arrived without further accident at Havana.

The privateer was, I think, fitted out from this island. The Captain is a Spaniard, a short man with a remarkable good face, that nobody would suspect to belong to such a gang. The Lieutenant is a Frenchman, a creole of St. Domingo, but called himself an Italian. The man they called Davis, who ordered me to be hanged, is the pilot or sailing master, and their boarding officer. He is an American, belongs to New-York, and was the worst man on board. He is a good looking fellow, something perhaps over the middle size, but the most brutal rascal I ever met. There was another American on board, only a common hand, being a drunkard. — Two negroes are all the residue of the gentlemen with whom I had much acquaintance.

The goods taken from us were upwards of fifty thousand dollars worth, and I have no doubt are landed on the coast of this Island. The neighborhood of Cuba will be troubled waters until our government shall seriously determine to put down this system of piracy.¹

Akin to this subject it may be proper to record an incident which many years ago concerned myself, and might have been tragical in its result. In the month of February, 1854, it fell to my lot to sail out of Boston harbor for Malta, aboard the bark *Sylph*, of Liverpool, Nova Scotia. At that period vessels sailing under the English flag were known in this country as *lime-juicers*, so called because in the British navy the consumption of lime or lemon juice was enforced as an anti-scorbutic remedy. The only other passenger beside myself was Gen. William A. Aiken, now of Norwich, Connecticut. The vessel was in command of Captain Roberts, of Liverpool; and the first officer was Mr. Hicks, and the second officer, Mr. Wharton.

¹ The situation in the Spanish countries to the south of the United States at the time of this incident invited such acts, and the lawless acts of armed vessels fitted out in Baltimore and other ports to prey upon Spanish commerce may be held in part responsible.

According to my recollection there were eight in the forecastle, which number, together with the cook and steward, made up a complement of fourteen persons, all told, aboard the bark. The cook and steward were represented by a single person of African descent, who prided himself both on his hair and his cooking, as well as on his brotherly kinship to the self-styled rival of Jenny Lind, who was then called the "Black Swan" (Elizabeth Taylor Greenfield), a singer, well known in her day. His hair deserves a word of special note, as it was sometimes closely associated with his cooking, inasmuch as its elaborate dressing was done before a glass hanging just beside a stove in the cook's galley. He generally kept his long wool tightly furled in numerous curling papers that stood out from his head like spikes. On great occasions, such as Sundays and wonderful deliverances from storms, he used to unfurl his kinky locks which seemed ample enough then to fill a bushel basket.

After a delay of a week or ten days in the harbor, owing to head winds or inclement weather we set sail; and I remember well that the pilot, Fowler by name, as he was about to leave the vessel, throwing his leg over the bulwarks, said in his gruff voice to our skipper, "I will give you twenty-eight days to the Straits."

There is little to write about the trip on the Atlantic side of the voyage more than it was very monotonous, so much so that both Aiken and myself for some slight relief used occasionally to help the captain "take the sun" at noon, and in this way we both became more or less expert in navigation. It was also interesting to watch the sailors in their various duties and pleasures; and from them we learned to splice ropes and to tie fancy knots. We learned, too, the words of command in proper sequence, as given by the captain, when he ordered the men to tack ship or to wear ship, all which was of great interest to us. Occasionally in good weather we used to take our trick at the wheel in order to break the monotony of the voyage. Sometimes we would catch a porpoise, of which the liver would give us a taste of fresh meat and remind us of home. Off Cape Trafalgar we sailed over the waters which floated the English fleet when Nelson fought his famous fight. I recollect the first glimpse we had of Cape Spartel, a point of land in the northwest corner of the African continent,

overlooking the Straits, which we made early in the morning of March 16, my birthday. With a head-wind it took two days to beat into the Mediterranean, where we had many calms and much bad weather. At one time we came near being wrecked in a gale off Cape de Gata on the southern coast of Spain, but generally we were cruising along the north coast of Africa, within a few leagues of land, as our sailing course was dependent upon the wind. At times we could see buildings and villages on the shore, and then would sink them behind as we sailed away.

The incident to which I have already alluded, occurred in the latter part of March, off Cape Tres Forcas on the Barbary Coast. One afternoon, as we were sailing along at low speed with little wind, two or three leagues from land, we spied two lateen-rigged feluccas, apparently following us, which at first sight attracted but little attention. Captain Roberts soon became suspicious of their movements and watched them closely, as they were gaining on us. We were going hardly more than two or three knots an hour, having little more than steering way, but they spreading much sail were faster. The captain soon gave orders to have an inventory taken of the firearms on board that could be used in case of need, but these were found to be few in number and in poor condition. The cook was ordered to heat as much boiling water as his small galley would allow, to be ready to repel any attempt to board the vessel. There was great excitement on the bark, and we fully expected to be attacked, but fortunately for us

The shades of night were falling fast,

and soon the sun went down. We then changed our course a point or two and threw a sail over the binnacle light so that the suspected pirates could not follow us; and thus we escaped what might have been a tragedy.

After our arrival at Malta we learned that three vessels had been taken by the Riff pirates, as they were called, near the time when we were threatened, and near the same point of land. Without doubt the captors belonged to the same crew as those that followed us. We were on the Mediterranean Sea at the time when the Crimean War broke out, England having declared war on March 28. This new condition of public affairs

caused great confusion in the movement of steamers and in transportation generally, as steamships were much needed for military purposes; on which account my stay at Malta was somewhat prolonged. During this time I saw a good deal of the American consul, Mr. William Winthrop, who was a kinsman of our former President, Mr. Winthrop, and at a later period a Corresponding Member of this Society. At the regular monthly meeting held on November 8, 1882, Mr. Robert C. Winthrop, Jr., paid a handsome tribute to the consul, on the occasion of the Society's receiving a liberal bequest from him. He ended his remarks by saying of him: "He took a pride, however, in being a Corresponding Member, — the only one in nearly a century who, so far as I am aware, ever left the Society a dollar, and I much fear that, in this respect, he is likely long to remain unique."

William Winthrop was a son of James Andrews, merchant of Boston, and Sarah Winthrop, a descendant in the sixth generation from Governor John Winthrop. On March 25, 1845, the name of William Winthrop Andrews was changed by legislative enactment so that he dropped his father's surname and took the maiden name of his mother. He was appointed United States Consul at Malta, October 7, 1834, and died at his post on July 3, 1869, in the 61st year of his age. A biographical notice of Mr. Winthrop appears in *The New-England Historical and Genealogical Register*, xxv. 92.

Remarks were made during the meeting by Messrs. LANE, HAYNES, NORCROSS, SANBORN, RANTOUL, MEAD, and W. R. LIVERMORE.

MEMOIR

OF

REV. ELIJAH WINCHESTER DONALD, D.D.

By HENRY WILLIAMSON HAYNES

ELIJAH WINCHESTER DONALD, the son of William Cooper and Agnes J. (Smart) Donald, was born in Andover, Massachusetts, July 31, 1848. His ancestors on both sides, except his father and mother, lived and died in Forfarshire, Scotland. They were nearly all yeomen and were not especially distinguished except for honesty and integrity. His father, who was long engaged in business in Andover as a manufacturer, was a man of deep religious sentiment, devotedly attached to the Congregational Church in that town. Once, when asked how it happened that his son, brought up strictly in the tenets of that denomination, should have become an Episcopalian, he answered, "His mother and I dedicated him to the ministry, but we neglected to designate the denomination." His mother was a woman of marked character, and exerted a great influence upon all her family. His brother says of her: "She was determined that her children should be well educated and well brought up, and it was not so easy in those days to get to college as it is now. I do not believe that my brother would ever have seen Amherst College, or become a minister, if it had not been for his mother's influence, diplomacy, and tireless energy and persistence." His friend, the late Dr. William R. Huntington, says of him that "by the accident of birth he was a New Englander, and to the day of his death a loyal one; but by all that differences one sort of countryman from another he must be rated a North Briton." In a marked degree he combined the power of the Puritan conscience with the Scotch tenacity of purpose. In May, 1864, when he was sixteen years of age, he joined the Free Christian Church in Andover. As he was passionately fond of music, he was invited, one Lent, to sing

in the choir of the Episcopal Church, and thus became interested in its constitution and ritual; but as he feared it might displease his father, he did not join it until in the latter half of his college course, when he became a communicant of Grace Church, Amherst. Once, when speaking of the different training of men and their previous church affiliations, he remarked that "what the Episcopal Church needs is to have men bring their Congregationalism into it with them."

Dr. Donald was prepared for college at the Punchard Free School in his native town and joined the Class of 1869 at Amherst College. Always devotedly attached to his college, he served her in many ways, and by her officers and graduates he was loved and deeply trusted. At the time of his death he was president of the Alumni Association, and from 1887 until then he had been a member of the Board of Trustees. He was always proud of the fact that he was the first Episcopalian clergyman to receive from her, in 1866, the honorary degree of Doctor of Divinity, which was also conferred upon him, in 1897, by the University of Western Pennsylvania.

The first year after graduating he became principal of the high school at Belchertown, Massachusetts, and the next year he was teacher of the classics in a preparatory school for boys at Newport, Rhode Island. As a teacher, he had more than temporary success. Some of his pupils bore witness in later years to the permanent influence he had exerted in their lives.

In 1871 he began the study of theology at the Protestant Episcopal Divinity School, West Philadelphia, Pennsylvania; but after a year he transferred himself to the Union Theological Seminary, New York city, where he graduated in 1874. In May of that year he was ordained deacon, and in October 17, 1875, priest, in the Protestant Episcopal Church.

His life, after he entered the ministry, naturally divides itself into two periods, — the one from 1874 to 1892, when he lived in New York, and the other from 1892 to 1904, when he lived in Boston.

For about a year he was curate at the Church of the Ascension, on Fifth Avenue, New York, under the late Rev. Dr. John Cotton Smith; and in 1876 he was made rector of an important parish at Washington Heights, New York, the Church of the Intercession, where he remained until 1882. His success

there was very marked, and he succeeded in greatly reducing the large debt by which the parish had been incumbered. On the death of Dr. Smith, in 1882, he was called to be rector of his former Church of the Ascension, where he remained for ten years. Of his work there I will quote again from the tribute paid to him by the late Dr. Huntington, his friend and neighbor in the ministry: "One of the most interesting features of Dr. Donald's New York ministry was what we may call its out-reaching character. He succeeded in establishing close relations with people of a class which the average minister seldom so much as touches. This was the more remarkable because the Ascension was not at that time, what it has since become, a church with free and open sittings. What his methods may have been I do not know; but this I do know that somehow there was gathered round about the compact body of his parishioners proper a wide fringe of detached, or semi-detached, adherents, who loved him dearly and would have followed him anywhere. He was a sort of Apostle to the Latin Quarter. Young men of business, strangers in the great city, struggling artists, budding journalists, — I venture to say that the young rector of the Ascension had more of these, and the like of these, under his wing, than any other pastor, certainly any other pastor of our communion, in New York. It was not so much his oratory, his eloquence, that attracted them, though that was a powerful magnet; it was his virility, his downright sincerity, his insight into their needs. Here is a man, they said, who will let us know what he really thinks about these questions that are vexing our souls. One who understands us, who will not be hard upon our infirmities, or chastise with scorpions our shortcomings. And so it was that the young rector came to have an exceedingly good report of them that were without. Bohemia heard him gladly. Let it not be supposed for a moment that this popularity with the people, whom most ministers of religion fail to reach, was won by any lowering of the standards. Far from it. His preaching and his teaching were ethical, unmistakably ethical, to the core. His counsels were ever the counsels of perfection. But to help men ethically, we must know men personally; if we would mend them, we must meet them. This is what he sought to do and did. . . . Listen to two witnesses, whose agreement is the more remarkable because

neither of them knew that the other was to be put upon the stand. This is what a former assistant writes, — and remember that a rector is not always a hero to his curates: ‘He had a genius for getting *en rapport* with the unsettled and the discouraged, and for steadying dizzy eyes. This power of his used to impress me greatly when I was with him at the Ascension. . . . Again and again would I see some one, a very picture of gloom, go in for an interview with him, and in half an hour reappear, the shadows all gone, and hope and a new will put in their place.’ And this is what another, now a university professor, has to say: ‘His very great love for young men, his sympathetic appreciation of their difficulties, untouched by any taint of sentimentality, and his untiring and unselfish devotion to their interests, when once they had gained his confidence, always impressed me, linked as this was with a winning sincerity such as I have known in no other person. He seemed to give himself not only spiritually but also physically to those whom he comforted. It often seemed to me that he actually changed places with them. I have seen stricken people leave him not only comforted but with a certain bodily elation, and have found him prostrated in his study.’ This testimony of two men is true; and very wonderful testimony it is. The cure of souls does not often take so much out of a man as it exacted of this keenly sensitive though seemingly defiant nature.”

On December 18, 1892, he succeeded the late Bishop Phillips Brooks, as rector of Trinity Church, Boston. To be the successor of so remarkable a man was a heroic task, which no one could have undertaken lightly; and he reached the decision so to do only after much hesitation. He came and he toiled in the spirit of willing sacrifice. In his sermon, preached February 14, 1897, on the twentieth anniversary of the consecration of the church, he said: “One of the most sagacious of our clergy, who knows Massachusetts well, wrote to me, ‘Whoever goes to Trinity Church goes to certain crucifixion.’ I am glad to say that he was mistaken. I have had much consideration and much encouragement. I dare to believe that I have won the love of many little children, and the good will of several men and women. Who could ask for more than that?” Of his predecessor he says in the same sermon: “The Episcopal Church in America has been more accurately and more winsomely pre-

sented to our people all over the land by Phillips Brooks than by any other man of this generation. The years as they go by only reveal more clearly how great were his services to our Church, *simply as an ecclesiasticism*. He made it American in its essential character, and stripped it of the last remaining semblance of an exotic. The presence in the Episcopal Church of multitudes of the descendants of the old Puritans does not mean the repudiation of the Puritan principles or the Puritan spirit; it signifies, rather, the reasonable abandonment of the Puritan polity, temporarily adopted for political reasons, and a return to the venerable body in which the Puritan was born and out of which he came." And he ends with this glowing and heartfelt tribute to him: "O strong, true prophet of our God! a million men are blessing thee for their redemption, through the power of Christ made manifest in thee, from the darkness of unbelief, from the freezing air that blows off from the icily perfect and coldly dead abstractions of the past. O strong and gentle friend of our humanity! who didst make brotherhood real and beautiful by thy unfailing friendships, thy noble magnanimities, thy perpetual benedictions and thy unfaltering trust in man. We, who remain in the old places a little longer, are praying that God may give us grace to live as thou didst in the light that shineth from the face of Jesus Christ."

Dr. Donald brought to his work in Boston an almost apostolic zeal and a great executive and directive force that manifested itself in many ways, such as the erection of the beautiful Galilee porch on the west front of Trinity; the completion of the chancel arrangements for a boy choir; the connection of the organ there with the great organ in the gallery, thus making of the whole one of the finest church instruments in the country; and the extinguishment of the debt that had rested for many years upon the rectory. Dr. Huntington says of his success in his new office, "It was of a quality not easily estimated on the surface. None the less was it a success of a high order. For ten years he maintained himself in his difficult position. His congregations were large, the number of communicants undiminished. Where he was pre-eminently successful was in his large and subtle power of sympathy. That tendency in him to sympathize with the weaker party in the fight, to champion the unpopular cause or befriend the unpopular man,

was multiplied fourfold in its application to human misery of any kind. For that he will be long and tenderly remembered."

His effectiveness as a preacher, combined with his interest in young men and the influence he exerted upon them, led to many demands for his service from universities and colleges. Thus he was on the board of preachers at Harvard from 1892 to 1896. He preached often at Yale, Amherst, Columbia, Trinity College and the Institute of Technology, in this city. He had an annual appointment at Cornell, in which he took great delight. In 1903 he spent three weeks at the University of Chicago, officiating as chaplain and giving lectures.

The Episcopal Church in Massachusetts conferred high honors upon him. Soon after coming to Boston he was made a member of the standing committee of the diocese, and in 1903 he became its president, holding this office at the time of his death, as well as that of delegate from Massachusetts to the General Convention. He had been made one of the trustees of the Cathedral of St. John the Divine in New York city while he was rector of Ascension Church, an appointment in which he took pride and interest, and his knowledge of church architecture enabled him to render substantial assistance in determining the choice of a plan. From 1900 until his death he was a trustee of Abbot Academy in his native town.

The impression he made upon the community in which he lived is reflected in an article that appeared in a leading Boston journal in a series describing "Famous People at Home": "Dr. Donald is charming in personal contact; full of graceful courtesy of speech and manner, humble really to all men who approach him with or without reason; patient, helpful, unconscious. The increasing use of his position makes his self-effacement in his ministrations more complete. He has always read the liturgy of his church with simple and unaffected dignity, and his sermons are increasing in power and in restraint." His thought was marked by such a powerful individualism and he was so outspoken in manner and word that he sometimes lacked in prudence and gave offence. Thus, in New York, at a moment when party feeling ran high he created surprise and distrust by his courageous defence of Tammany, growing out of his strong belief in the benefits of party organization. "His courage was superb," says Dr. Huntington; "it led him to defy deep-

seated prejudices and even convictions which were esteemed sacred by many. Thus, when the General Convention was in session at San Francisco, in 1901, he dared to speak his mind on the subject of 'Apostolic Succession' to the dismay and horror of many of the delegates. His action in throwing open Trinity Church to another religious body on the occasion of the funeral of Governor Wolcott was a courageous one, for it meant hostility and bitter criticism. Of this he was well aware when he decided to take the step. So at a meeting of the Church Congress, in Providence, he manifested sympathy with some of the tenets of Christian Science."

In his theology he would be classed as a Broad Churchman, but he differed from many who are grouped under that designation. His breadth consisted in his wide sympathy with all Christian bodies; this compelled him to reject every principle whose significance lay in limitations or exclusiveness. He had what is sometimes called "modernity"; he looked at every question from the point of view of the modern man, to whose cultivation the present age has contributed its essential quota.

In 1896 he delivered a course of six lectures before the Lowell Institute, which were afterwards published under the title of "The Expansion of Religion." This is the principal literary work he has left, although some thirty or more of his occasional addresses and sermons have been printed. In the preface he says that "these lectures do not claim to be original, eloquent, erudite, or academic. They are the record of a working clergyman's sober thinking upon a subject, profound interest in which is coterminous with the life of man. As such a record only they are offered to the public." I think I can give in no better way a complete setting forth of the man's whole nature, his intellectual qualities, the style of his thought, his beliefs and his sympathies, his hopes and his aspirations, than by allowing him to speak for himself. I will accordingly attempt to give a somewhat extended summary of the contents of the six chapters that make up the substance of the volume.

CHAPTER I. *Religion and Salvation.*

He begins by claiming that religion is "no longer regarded as the sole possession of organization and formal statement;

it is rather an atmosphere in which the healthy life of man is most successfully lived. . . . Judge Sewall knew where Religion began and where it ended in the social and personal life of the seventeenth century. It began with a correct notion and ended in correct conduct. . . . The expansion of religion was unthinkable two hundred years ago. . . . What has been aptly termed the 'theological thaw' of the last quarter of a century is too frequently set down as decisive of the melting out from the spiritual life of the community of the imperative sanctions of duty. . . . It is not misrepresentative of our time to describe it as unreasonably despondent about the present prospects of religion." . . . But his belief is that "what may still be regarded in some quarters as an evidence of decay ought really to be seen to be the mark of vitality." He defines religion as "the soul's instinctive, fundamental, ineradicable feeling or conviction that it stands in a real relation to Deity, and that this relation is capable of conscious and continuous realization by action, — the adoration of an idol, the burning of a beast, the offering of a prayer." . . . He speaks "not as an apologist of a decaying, but as the interpreter of an expanding force. . . . In its conception of the nature of God, Religion has witnessed a marvellous expansion in the last half of the nineteenth century. It has developed marvellously the idea of love, not only as an amiable quality, but as a magnificent force. . . . The prolonged emphasis that accents the doctrine of the Fatherhood of God . . . has perhaps obscured its real importance as a distinct addition to the idea of God, to which modern times have attained. . . . With the expansion of Religion into a confident conception of God as our Father, the appeal to fear has ceased in many quarters, and has been almost hushed in all. . . . It ought not to be regarded as strange that the old insistence upon the certainty of vengeance, uttering itself in endless torture of the wicked, should die away. . . . If anything may be safely affirmed . . . it is that conscience testifies to the reality of sin, as the result of self-determination, with all the rigor and un pitying sternness which have characterized its operations from the day in which the first liar uttered his lie and knew his soul was stained. . . . Equally characteristic is the complete freedom of the intellect in its search for truth. The sole authority in Religion is truth demonstrated,

fact verified. And there can be no other. For if men accept any 'outward authority' in Religion, as in science, or art, or government, it is only because that authority has proved itself competent by the character of the truth and fact for which it vouches . . . The decline of the principle of arbitrary authority is not simply coincident with the expansion of Religion, it is distinctly its creation. . . . Christianity is identical with all Religions in its purpose to bring man and God together. But to Religion to-day Salvation means the saving of all in a human being which is capable of being saved. The Expansion of Religion is best observed in all those enterprises which seek to furnish a ministry to every faculty of man, . . . all are symptoms of a religious purpose . . . to secure to man the condition under which all that is best in him shall have the best chance to be at its best. Salvation must be expanded to meet the requirements of the larger man to be saved."

CHAPTER II. *The New Anthropology.*

"It would be difficult to exaggerate the difference in the estimates put upon the value of a human life in our day and in times past. A high value is set upon the worth of a human being. Instead of sacrificing him for the sake of organization, — State, Church, Society, or Order, all these exist to create and secure to him the conditions under which he may have the chance to live what he conceives to be his fullest life. . . . The building of the Pyramids attests the carelessly slight value set upon a thinking, feeling human being, made in the image of God. . . . The plain fact of history is that the lower the estimate put upon man the lower we shall find the conception of the nature of God to be. . . . Religion is the source of all these endeavors which are seeking the reformation of human society, because Religion is the source of that new value given to man, which makes saving him seem worth while. . . . The first evidence of this is the establishment of the hospital. It was not until the fourth century, when Christianity had become a power, that the first hospital was founded. These, in connection with ecclesiastical institutions, grew apace, until at the beginning of the last century they became a fixed feature of municipal and military life. But it was reserved for the last

two generations to develop the hospital idea. The expansion of Religion, on that side of it which regards the human body, precedes and inexorably conditions the expansion of the hospital to meet the needs of suffering. . . . I find also that sanitary science is under larger obligations to Religion than appears upon the surface. This is to be seen wherever legitimately selfish intelligence and competitive urgency demand it; but in another direction sets the religious spirit; this demands that the ignorant poor shall share with the intelligent rich in the benefits of sanitary science. This movement, however non-religious it may appear here and there, is at heart religious, Christian as well. . . . Men and women, who perhaps repudiate orthodoxy of every sort, have found in their devotion to their brother's need the surest warrant for our believing that deep in their hearts was a truer Religion than that illustrated in a scrupulous ritual. . . . I cannot, and will not believe that Religion is decaying, so long as vigorous warfare is waged against everything which lowers respect for the bodies, which are the temples of the Holy Ghost." . . . Again he says: "the astonishing increase of physical exercise has to many minds frequently worn the look of a logical consequence of the so-called materialism of the day. But such a judgment overlooks several considerations which have to do with Religion. So far from physical culture being a sign of decaying spirituality it is rather the as yet unconscious but none the less true insistence upon the indubitable fact that ministry to the body is as truly an act of Religion as ministry to the soul. It is characteristic of our times that we are trying to lift the passion for the body's development clean out of the idea of it as valuable mainly for making a nation of vigorous soldiers and muscular toilers, and are setting it forth as an integral part of the idea of the perfect man. The new anthropology, by insisting upon the sacredness of the body as the instrument of the mind, and upon the mind as the servant of the spirit, and further by declaring that the salvation of each is essential to the salvation of the total man, for which Religion exists, will soonest and surest elevate physical culture to its rightful place in the economy of education." Again he says: "The relation of the new anthropology to the use of Sunday must not be ignored. The present use of Sunday is widely regarded as a revolt against ancient Sabbatarianism,

and equally a revolt against Religion as a force regulating both belief and conduct. It would be far truer to interpret the modern Sunday as a return to what was most characteristic of the Levitical doctrine of the Sabbath, and a fulfilment of what is in the Christian doctrine of Sunday. The Fourth Commandment legislates not against recreation or amusement, but against toil. By it there is an absolute prohibition laid upon all sorts of work by every sort of people. It is utterly to mistake the meaning of that still powerful, still beneficent institution to regard it as an exasperating restriction laid upon the happiness and freedom of man. Our modern Sunday, with its emphasis upon recreation, so far from being a revolt from Sabbatarianism, is demonstrably a return to it. Of the true significance of the emancipation of our modern Sunday from gloom, depression and an irrational prohibition of recreation, there *ought* to be no doubt. It is the product of the new anthropology. Doing nothing is not rest; it is indolence. Rest is activity in recreation. We have, accordingly, opened the doors of Museum and Library. We have deliberately enlarged the number of permitted pleasures, because we have intelligently concluded that whatever ministers to the physical betterment of man is a legitimate ministry to his soul as well. . . . Disuse of public worship is more general than it was a quarter of a century ago. A period of 'masterly inactivity' in nearly all forms of enterprising religious endeavor ensues. . . . Superficially viewed, the American Sunday is not pleasant. . . . We are experimenting; but disuse of the church seems now, at least, to be unattended by serious loss of moral force in communities and men. . . . The modern Sunday is imperfect, but that imperfectness will not be corrected by prohibiting recreation but by restraining its present excess. To-day's treatment of Sunday is not final. The very fact that what it is to-day in larger freedom from ancient and venerated restraints is due to Religion, is ample warrant for believing that Religion is competent to recast Sunday. . . . It is this new anthropology, also, which has set sickness in a new light. I know nothing more hopeful in the sentiment of young men touching the whole question of athletics than their clear perception and their frank declaration that ill health in a young man, who starts out with no hereditary or constitutional weakness, is a disgrace

and not a misfortune. When physical exercise was made a compulsory part of education at Amherst thirty years ago, ranking in importance with the study of Greek and Mathematics, it was, and was intended to be, a bold denial of the opinion that a student's health was at the mercy of Divine Providence; an assertion of the truth that health is in part a religious achievement. The adoption of similar systems elsewhere has resulted in incalculable good. . . . When one looks back fifty years and contrasts the nature of the effort Religion made to save man with the passionate efforts she is making now, he cannot think Religion has decayed. . . . In America Religion is everywhere, — almost as much of it outside as inside the churches, — independent of visible means of spiritual support, yet always eager to do what Religion lives to accomplish."

CHAPTER III. *Religion and Righteousness.*

"Religion and science have never needed any reconciliation, and never will; because each of them is in search of truth; and just in proportion as each of them finds her they will be in agreement. Organized Religion has markedly receded from many a position of open and sometimes bitter opposition to the discoveries and theories of men of science. The hypothesis of Evolution may or may not prove true, but the attitude of Organized Religion towards it to-day, in contrast with the frightened, panicky condemnation both of it and of those who urged it, a quarter of a century ago, is grateful evidence that Religion has grown calm; has regained confidence in herself, as in no danger from the new interpretation of herself, which evolutionary theories may require or have already effected. But, on the other hand, the spirit and temper of science have changed more radically even than those of Organized Religion. . . . Religion is frankly recognized as the formulation of a force just as real and just as persistent as that of which gravitation is the scientific name. Religion, as distinguished from Theology and Ecclesiasticism, is as much an object of serious and intelligent interest to men of Science as to men of Religion; which has enlarged itself to receive the help which science furnishes in the form of knowledge. . . . The incorporation of the eco-

nostic value of righteousness into the estimate put upon its spiritual value is one of the most marked features of the time. . . . To think of righteousness as no more than a beautiful and useful quality of those who put themselves under the guidance of God in order that they may gain and keep it, the reward of which is jealously reserved in heaven, is to miss its true glory and no less its immediate and solid worth. Unrighteousness is waste, — waste of men, waste of energy, waste of the public trust. . . . It is becoming clear that the material welfare of the city is as truly in the custody of Religion as in that of industry and trade; and she has once more found herself entrusted with a message. You cannot build up a society or a state, ordered, free, prosperous and safe, unless you build it upon righteousness, the product of a profound belief in God. This discovered genius for enforcing the value of godliness to human society and government is one of the most characteristic marks of the expansion of religion. . . . The old question whether Religion should have anything to do with politics ceases to be a question, for politics is religion, and religion is politics, by virtue of the identity of their ideal struggle to produce political righteousness; which is conformity to what is right, that is, what is good. But to know what is right or good is not the simple affair it promises at the start to be. The ruin of Israel was not wrought by her failure to perceive the necessity of righteousness, but by her failure to understand exactly what it was. Christianity started out with the clearest possible perception of the fatal error in Jewish righteousness. Goodness cometh not by the way of the understanding; it cometh by the way of the heart. Not the man who understands, but the man who does, possesses the secret of the Lord. . . . One of the evil results of an otherwise beneficent evangelicalism was her too heavily emphasized doctrine of justification by faith; meaning that it is far more important that a particular doctrine should be believed and acted upon than that the conduct should square with eternal right. Salvation was interpreted as the conscious possession of *pardon of sin*; and as the conviction that this pardon would stay throughout the longest life, warranting its hope of entrance into heaven. The tendency to substitute doctrinal correctness and demonstrative emotion for inward righteousness has characterized religion for nigh a

century. Now, Religion has begun to discover her blunder or her sin, and to set herself once more in her rightful place as the teacher of doctrine for the sake of righteousness. Insistence upon real righteousness is now everywhere the character mark of living Religion. The real explanation of the present passion of Religion for righteousness is not the decay of theology, but of the theological temper. To speak particularly of the Christian Church. It holds that Baptism and the Lord's Supper are *necessary to salvation*. But Baptism is not a magical rite; it is the symbol of *entrance into a chance* 'to live a godly life.' It is 'necessary to salvation' only in the sense that to possess a chance to be virtuously brought up is necessary to the development of personal righteousness; which is salvation. The Lord's Supper is necessary to salvation only because through it and by it the reverent soul receives a Divine strength, which it is to transmute into personal righteousness, which is salvation; and that is possible only as man knows, obeys and loves a righteous God. . . . Religion has by no means thoroughly finished her work of discriminating between real and conventional righteousness. . . . There are no more misleading terms in use to-day than 'criminal classes,' 'vicious classes.' Religion must include in the criminal class that not inconsiderable number of respected, though not respectable, men, who break law in gentlemanly fashion, by methods not one whit more honest than the burglar's, and tenfold more destructive to the security of society. But there are signs in our moral sky that the expansion of religion in the direction of ethical clairvoyance will not always tolerate this confusion. And so of the vicious class. Religion is asking whence comes the material support of the dreadful vice which festers in all our great cities. There will surely come a day of reckoning between the so-called vicious classes and those who, preserving their respectability, have helped to support vice. The expansion of religion is in very truth the hope of the future. The public safety — safety for goods, for persons, for laws, for rights, for privileges — lies in the moral quality of the people produced by a Religion that holds up for the people's reverence a moral as truly as a loving God."

CHAPTER IV. *Religion and Industrialism.*

“Within the last quarter of a century there has grown up a class of problems and a series of movements, which are rather loosely included under the name of Industrialism. These problems are made up of questions touching wages, hours of work, conditions of labor and distribution. . . . What pre-eminently characterizes labor unions now is their clear perception and strong conviction that the interests of all labor, whatever be its special form, are one; and the present ‘Solidarity of Labor’ has created what is called Industrialism. . . . The surprises and checks which may at any moment rise out of organized labor, are illustrations of the interdependence of labor in modern times. When extended to the industries of the whole country, we can understand the colossal proportions of this new figure, which has risen up in sturdy strength among the movements of the end of the last century. Moreover we must reckon in the consolidation of the world’s markets. Any sort of production anywhere affects every sort of production everywhere. The industrial world is now one huge workshop and all parts are interdependent. Again, the great industrial centres and the methods of regular and rapid transportation are all of recent origin. . . . Still, multitudes of people refuse to believe that Industrialism presents any specially critical problems for civilization to solve. But they exist in force, and the importance conceded to them is not too great. So much real distress, so much blind revolt, so frightfully huge losses, and so much bitter conflict, must mean the existence in the midst of us of a deep-seated trouble. In other words, we must reckon with Industrialism. Now, labor urges against civilization that it is unjust in these three respects: first, it metes out to labor an insufficient wage; second, it compels too long hours; and third, it insists upon an inequitable distribution of the products of labor. These results, it claims, are the outcome of a condition which civilization has created deliberately or unconsciously, and which civilization is unwilling to change. The working-man denounces society as unjust, cruel and sordid; and capital cries: ‘What can I do other than what I am doing? I did not create the law of supply and demand. I did not inaugurate competition.

Society, not I, is responsible for them.' Each disclaims any share in creating or perpetuating the conditions which labor pronounces to be unjust. . . . Let us examine the charges Industrialism urges against civilization. *Its wages are too low.* If by this is meant that wages are less than wage-earners would like them to be, we are all agreed. But the real question is 'How much can the fund out of which all wages are paid devote to the compensation of labor without exhausting itself?' Before civilization can say how much wages *should* be paid, science must first show us how much *can* be paid without fatal injury to the industry itself. Civilization, as such, is absolutely powerless to raise and equally powerless to lower the wages of any man. That act is performed by another aggregation of forces. If it is urged that civilization should promptly accept the precisely stated conclusions of political economy touching the regulation of wages by legislation, we are sadly obliged to confess that there are no such conclusions. It has to-day no accepted theory of regulating wages by arbitrary enactment. It is obliged to admit that the law of supply and demand is the only law according to which the business of the world can be conducted. . . . The labor unions have had, and in the future will have, a powerful influence in securing better wages, but only because 'combinations can make better terms than the individual.' . . . But labor unionism itself is an industrial factor to be treated like other factors, such as the currency, the tariff and the cost of living. Secondly, it is charged that *civilization decrees long hours to wage-earners.* 'Long' as applied to hours is altogether indefinite. Eighty years ago men worked ninety, and in some instances and countries, one hundred hours a week. To-day the average number of hours for adults is fifty-three. But the working-man and the political economist have agitated for a fixed number of working hours. First, for a ten-hour law, then a nine-hour, and finally for an eight-hour law. Beyond eight hours no one has thus far proposed to go. . . . On the whole the economical results of shorter working-days during the last fifty years have vindicated the reduction. The question of to-day is simply whether, under general industrial conditions, another reduction of hours can be made with safety to any dividends or profits at all, and with safety to wages. It is once more a problem in economics. . . . In the

third place, Industrialism charges civilization with *the responsibility of maintaining an inequitable distribution of labor's produce*. But it ought first to be ascertained how much of all that is produced by the only three producers known to political economy, — land, capital and labor, — is directly due to labor. Now rent, now interest and now wages seems the rightful claimant to the lion's share. Labor, however, has recently made the claim that *it* produces the whole of it; and if it could substantiate that claim, it would get the whole of it. The great practical truth, which is slowly emerging, seems to be this: that the action of none of the three producers should ever be dampened or checked in such a way as to diminish their productive efficiency; either by interfering with their freedom, or by so diminishing their rewards as to diminish the vigor which they themselves exert. . . . The examination of the threefold indictment of civilization has thus far been conducted on economic lines. I wished completely to separate the work of political economy from the task of Religion, in order the more clearly to set forth the powerful influence which Religion, expanded to the new needs of the new day, is destined to exert in determining the solution of the problem of Industrialism. It is the confusion of the offices of each which has brought political economy into contempt, and Religion into distrust; not seldom into disrepute. It is significant that Religion has at last roused itself to a consciousness that it has a duty towards Industrialism. The Institutional Church, of which we hear so much, and are destined to hear more, finds a place for the study of all those industrial questions which touch the real life of man. And yet Religion was never so blamed as to-day for withholding her influence and her effort from the cause of the working-man. In the first place, Religion is identified with Ecclesiasticism, and the behavior of the churches is naturally charged to Religion. But Religion, which only imperfectly utters itself through the churches, is always in the forefront of the battle waged against injustice and wrong. The moment Religion is differentiated from the churches, which it created as organs for the utterance of itself, half the charge that Religion is on the side of privilege and the present social order falls to the ground. In the second place, Religion is denounced as hostile to industrial conditions, because it does not commit

itself to all the plans of relief which Industrialism or Political Economy has proposed. It is the business of Religion to side boldly and vigorously with the wronged, the oppressed, — there can be doubt of that; but first of all it is necessary to ascertain who are the wronged and oppressed, and where lies the cause of the wrong and oppression. No strike has ever been caused by the purely economical question of wages, hours, or distribution alone; into every strike there enters the angry or sad dislike of the working-man, the hard, suspicious dread of the employer. But no industrial problem will ever be satisfactorily or peacefully solved, unless there is love enough to create the patience, forbearance, consideration and conciliation necessary to hear and understand the truth. ‘Love one another,’ which is the sacred watchword of Religion, is worth as much to Industrialism as the announcement and verification of its most precious economical truth. And it is the profound and passionate conviction of this truth, it is the hope which has been created by what it has already achieved, that arms Religion to-day with the invincible belief that she has a ministry of healing to Industrialism, which nothing else can give. Religion must create an atmosphere of justice and righteousness, in which the richest advantages will look poor and mean beside the slightest injustice which secured it. Religion, instead of giving herself wholly or even mainly to the task of establishing justice by enactment, has thrown herself into the work of making men just; in order that justice and righteousness may have their way in settling the incessant disputes and differences, which seem inseparable from the working of the vast and complex machinery of production. . . . In the third place, Religion is creating an atmosphere of brotherhood, in which the selfish powers of might hesitate, falter and fail to do any deed, which crushes out of a brother’s life that ideal of Salvation, which it is the duty of all of us to nurture and refine. Working along the lines of the new anthropology, Religion is insisting upon the necessity of brotherly union in the interest of the common weal. . . . A really religious employer will not be content to see his wealth increase, if the human beings who co-operate with him to create it are by the conditions of their toil deprived of every chance to develop and discipline themselves into something other than the cogs in the great wheel of Industrialism.

The curse which has long rested upon Individualism is the curse of unsympathetic, unintelligent and unnatural relations between all the parties who create it. To lift that curse is the task Religion in these last days has set herself to perform. It is this characteristic of Religion, which discloses her real nearness to the as yet incomplete Federation of Labor, which is imperfect Religion, just as a good deal of our Ecclesiasticism is imperfect Religion. . . . With the rise of our great manufacturing establishments there has been an enormous increase in the employment of women as toilers by the side of men. That this innovation has brought woman a larger freedom, a more self-respecting independence, cannot be doubted; or that it has increased the amount of production and wealth. But it cannot be long before we shall have to pay the cost of it; and that cost will be an enfeebled feminine physique. For the holy office of maternity the present position of woman in Industrialism, the tasks laid upon her, the hours and conditions of toil, are the worst preparation conceivable. All the economic advantages of the present system shrivel into nothingness in comparison with the fundamental damage done to woman by her unnatural struggle to secure those advantages. Anything which lowers the general estimate of marriage and the family is a distinct social wrong. We must set ourselves radically to reform the culpably careless arrangement, which has increased our wealth, but has correspondingly decreased reverence for marriage by lessening its social necessity; and has weakened the bonds which bind the family together, and preserve it as the most powerfully beneficent social force in civilization."

CHAPTER V. *Religion and Socialism.*

"It is one of the commonplaces of history that the noblest speculative theories and the most wisely elaborated programmes for the improvement of human society have been wrecked upon the rocks of human selfishness, in one or many of the forms of wrongdoing that it perennially assumes. But through all these shines the unfailing hope that in a future, as certain as the past, such an adjustment of Society and Individualism will be evolved as will cause Society to do only justice and Individualism to perform its duties. It is an elementary truth that

Religion can be on the side exclusively neither of Socialism nor of Individualism; because from the beginning Religion has taught socialism, while at the same time insisting upon individualism. It will be helpful to point out how strenuously Religion insists upon the separateness of the individual. It is in its nature to do so, for Religion is primarily a matter between God and a personal soul. Christianity is pre-eminently, characteristically eager for the growth and vigor of the idea of individualism, realized into virile, personal will. Without this individual consciousness there is no strong, clear sense of personal responsibility; and more and more will man throw upon anything the guilt of acts whose consequences are evil. Half of being 'born again,' in the phrase of Jesus, is the recovery of the consciousness of separate self-hood, which is the beginning of a true moral education. But Religion is equally on the side of organization by the great stress it lays upon the duty of loyalty to superiority, and upon the duty of protection to inferiority. If we were all born equal there would be no need of this. The progress of the world has been attained largely through competent leadership, intelligently and loyally followed by those to whom its results are a boon. It is clear that this must in some way be the exercise of association, which, while binding men together, unites them as independent persons, not as passive instruments. It is Religion which furnishes the type of such association, because it asserts the duty of obedience to God. This is the genesis of the Church, which is ideally a brotherhood, exhibiting as an organization the corporate loyalty which lives in the individual, and receiving, as an organization, the corporate blessings which descend upon the individual. The social duty of man appears as growing out of obedience to God. Part of that social duty is that which is owed by inferiority to superiority, when proved to be fruitful in valuable results. 'The divine right of kings' and the 'omnipotence of parliament' are the historical distortions of this fundamental truth of religion and of organized society. Religion without loyalty to God is unthinkable; progress without loyalty to superiority is impossible. The two ideas are so indissolubly bound together that vigorous religion and continuous progress have always gone together in human history. But the duty of protection to inferiority is equally fundamental. Leadership is

under bonds to furnish its followers with all the blessings it can receive; and upon it is conditioned the duty of inferiority to be loyal to it. Recreancy to this obligation is responsible for almost all the disasters which have overtaken the world. Leadership has been the greatest curse and the greatest blessing the race has known; and the only known force to persuade or compel it to discharge its sacred trust is Religion. . . . Socialism, apparently, is a modern growth or discovery; but it really dates back to the days when the military organization of society was slowly broken up, and the process of political emancipation and enfranchisement was inaugurated. The French Revolution is the spectacular exhibition of how far this process had extended at the close of the eighteenth century in much of European society. Since that time an almost uninterrupted process of extending powers and privileges to classes once excluded from them has characterized modern society. Every government has yielded something to democracy, regarded either as a theoretically sound abstraction, as in France, or as an institution which practically suits the purposes of society, as in England and America. . . . The power of the people has increased since 1832 with every decade, and is increasing still. But the extension of political rights has been accompanied by an equally significant, though not equally great, admittance of the people to educational, industrial and social opportunities. The number of highly, not to say academically, educated persons in Europe and America is estimated to be tenfold more to-day than fifty years ago in proportion to the population. The public school system has been not only extended but lifted. Laws have been enacted in certain communities making attendance upon the schools compulsory. . . . Equally significant is the history of industrial legislation. It is all, without a break, on the side of labor. All its demands have not been granted, but none of the requests of capital for relief have been incorporated into the statutes. Any advantage capital has secured has been by indirection. Those of us whose interests are not directly affected fail to appreciate the radical and wide extent of the changes in laws regulating the rights of employers on the one hand and the duties of employed on the other, which have been wrought throughout the whole industrial world. And finally, the social improvement of the people has kept

pace with their political, educational and industrial betterment. The unstayed tendency of modern society is towards an equalization of chances, to an equal distribution of rights and privileges. . . . But as an accompaniment this tendency has suggested the thought in many minds that by the operation of law, enacted by the State, there may be created an absolute equality of every human being as regards means, rights, opportunities, labor and enjoyment. This is the programme of real, thorough-going Socialism: so to reorganize human society by state enactment that there shall be an absolute statutory equality of opportunity and possessions for every member of society. Socialism is the straightforward doctrine of no private property, state ownership, state management, and state distribution. It is well now and then to call things by their right names. . . . The two forms which Socialism assumes are Communism and Collectivism, the former being fast superseded by the latter. *Communism* is like those perfect working models, which utterly break down when realized in the massive engines that were fashioned to prove their practicability. It is equality by voluntary consent, erected into fact by the free action of all contributors and consequent sharers; but *Collectiveness* is another thing. It means not simply the abolition of private property by a free compact, as Communism preaches, but having captured the government to impose itself by legislative action upon the nation. The State is to own all material, all tools, all products; to own and direct all systems of transportation and communication; to manage directly all financial, industrial and agricultural enterprises; and to determine every economic question that may arise. In return for this it guarantees to all citizens an equal share of all the benefits of every sort which may result. . . . We must determine, if we can, what is, not what ought to be, the relation of Religion to Socialism as thus defined by itself. Religion must be opposed to Socialism, if its effect is to reduce what is most characteristically individual, and to sacrifice it upon the altar of organization. But *is* this the effect? Manifestly, there is no answer to that question, because nowhere has socialism been *realized*; and its effect upon the individual is an affair of pure prophecy. But those isolated illustrations of voluntary Communism, which are thus far the only examples of concrete Socialism, seem to show what the

effect would be. . . . A monotonous, dull, unprogressive existence, the prosperity of peasants, with a peasant's hope, a peasant's aim. A safe, unenterprising, material prosperity of low degree is all that the oldest and most successful of our communistic communities can show as the social result of their theory reduced to practice. This criticism of Socialism is neither theoretical nor prophetic; it is strictly historic, and it shows that Socialism, so far as it destroys Individualism, is opposed to Religion. . . . Organized Religion may be on its side; but it has been on the wrong side too often in the history of mankind for us ever to regard its position as necessarily infallible. It is enough, and more than enough, to discredit Socialism in the eyes of real Religion that it would inevitably overturn one of the eternal foundations upon which Religion solidly, eternally rests. There is no place in it for leadership, but only for power, and power lodged in a vague organization. God has so ordered the deep instincts of humanity that they can be interpreted, regulated and refined only through leadership. Blessing follows obedience; safety issues from obedience. The Divine leadership and the human obedience to it constitute the real history of Christianity, and remain the source of its power. All that is best in a man at his best comes through obedience to leadership; which absolute equality of opportunity and wealth rigorously excludes. That is why Socialism can never be the basis of human society. Again, Socialism makes no provision for the duty of protection which strength owes to weakness. It protests that when it shall have remade the world there will be no battle of life, because weakness will have as good a chance as strength. But weakness needs a *better* chance than strength, *because it is weakness*. What Society as it now exists is trying to do is to secure to weakness that better chance. Religion has developed compassion to the point of energetic, explicit demand that superiority shall stand aside so that inferiority may secure the opportunity which unaided it is powerless to seize, yet pathetically needs. Religion enlarged for all its new and nobler duties is ever striving for a society which shall exhibit throughout its complicated structure the perfect working of that social truth, which St. Paul has finely phrased, 'We that are strong ought to bear the infirmities of the weak.' Religion is the inspiration of every proposition that

looks towards human welfare, and it has the right to claim the credit of creating all the social forces which are working for the common weal; though she may hold aloof from many of the forms through which those forces work."

CHAPTER VI. *Organized Religion.*

"The school, the university, the library are *education organized*. The schools and museums and galleries are *art organized*. Theoretically it is easy to find Religion outside of organization; and it is not hard to find it there practically, if we are spiritually alert. But the plain fact is that for the most part, in the past and in the present, Religion is to be found inside of organization. Popularly it will always be judged by the spirit of the organization, through which it utters itself. . . . The perfect church on this earth is a dream. A church whose doctrinal structure is without flaw, and whose ritual is absolutely adequate for the general need, has never stood upon this earth and never will. The very love we bear the churches of our choice frequently makes us insensible to their defects. The history of every church that has ever stood in the community has pages which its adherents wish were blotted out. What then can Organized Religion in our time urge as valid claims upon the allegiance of the people? First of all, is the substantial contribution Organized Religion makes in the form of ministry to man's instinctive sensitiveness to God. Churches can die, do die; but they die only when God is no longer felt to be in them. To minister to, not to create, veneration and awe are the churches maintained. To furnish opportunities for self-expansion, to interpret and to direct the hunger for worship, and to keep faith from degenerating into fantastic extravagance on the one hand and into idle dreaming on the other, is the function of Organized Religion from the beginning. All healthy being turns instinctively to the organization, which speaks a blessing and declares 'a reasonable and religious hope.' The Church does not create the blessing, it conveys it, utters it, accepts it. The Church does not claim to have sole possession of that reasonable hope; she claims only to declare it in the ears of men, who cherish it as their only solution of the dread mystery of death. And at the end of the century the churches re-

laxing, but not relinquishing, the importance of formal test, are more and more ready to give a cordial welcome to all who wish to live lives inspired by the elemental truth of Religion. They are best represented by their largest-hearted, widest-minded leaders, and they are forever opening wider the doors that the multitudes, who are more eager to be profoundly moved by the felt presence of God than to define Him and to dictate to Him, may enter in to worship and adore. The coming revival of Religion may have its origin not among the outcasts and the frankly bad, but among the intelligent and upright. But its note will be not repentance but recovery, — the recovery of the lost sense of God's presence among men. . . . The second claim in behalf of Organized Religion is its exercise of ethical force in the life of Society. Righteousness is as necessary to society as commerce and industry; and righteousness is the product of Religion. To-day the churches are more sensitive to the ethical significance, not only of their own especial action, but of all their movements and agitation in the great world of society which show the direction of its current, than at any time in their history. Society confidently counts upon Organized Religion to champion every thoroughly *ethical* question which arises. Society invariably turns to the churches, when some extraordinary issue demands an untiring, undaunted advocate. You cannot name a single *frankly moral* movement in any community, behind which you do not find the Church in some one of its many organizations. Contrast the impression and influence of the churches with the influence and impression *ethically* of the press, the stage, the schools, our three powerful agencies in affecting Society. As *journals*, the press almost without exception is on the side of righteousness, social and individual; it voices the best moral sentiment of the community, denounces crime and vice, and gives generous support to all our noblest endeavors to lift society up. But as *newspapers*, with rare and honored as well as honorable exceptions, the press is largely on the side of what inevitably stains, vulgarizes and finally corrupts the imagination and hearts of men. No one seriously denies it; the press, when driven into a corner, admits it, and offers the indefensible defence that a newspaper is a photograph of the world's daily life. On the other hand, the churches care nothing for the wishes and the hankerings of

the people. Not what we like, but what we ought to like, is the sole motive of their utterances and endeavors. The press, with all its visibly exercised power for righteousness, is every day negating its noblest influence by its willingness to make evil attractive by dressing it in gauze and spangles that it may be interesting. The 'liberty of the press' is not worth to society half so much as the vigor of the churches; for what society needs, as it needs nothing under heaven, is the strong, uncompromising utterance of the imperativeness of the moral law. . . . Of the need of the play-house to healthy life there ought to be no serious doubt. It directly and fruitfully ministers to one of the most legitimate instincts of human nature. It is good for a man to laugh the hearty laugh, which banishes the cobwebs from his brain; to feel the unusualness of a strong emotion kindled by something other than his chances of success, his danger of defeat; and to be freed, if only for a space, from the heavy weight upon his heart. And the opportunity for this the play-house furnishes. How important a part the theatre plays in modern society it is needless to describe. How wholesome much of its influence is upon the spirit of society we gladly admit. But there haunt its doors, like evil spirits, the subtle temptations to mingle with its innocent diversions, and with its representations of life's noblest passions, the vulgar spectacle that debases, the clever, brilliant wickedness that destroys the bloom of innocence and introduces sweet poison into the soul. The play-house is not set for the ethical health of society; it is set for its entertainment. But the churches, which in the last twenty years have introduced many an attraction, have never lowered the standards of righteousness. Their aim has been openly ethical. Diversion, for the sake of moral education, has been and is the principle which is intended to control the aim of every enterprise not specifically religious, which the churches have organized and maintained. The churches are the doors which open into righteousness; the theatres are the beautiful gateways into wholesome recreation, but too frequently also into ways of harm, and sin, and shame. . . . The primary purpose of the school is to impart knowledge and to discipline power. It would be too sweeping to affirm that religion and morals have been banished from the schools. It would be more exact to say that ecclesiasticism, and the ethics

which are found in it, have disappeared from the formal *curriculum* of all state schools and of many private schools. But the expansion of Religion has permeated to a considerable degree the atmosphere of our public schools. They are neither wholly irreligious nor unmoral. The character of those in whose care they are forbids it. Yet the nature and extent of ethical teaching in them are satisfactory to no one who is alive to the fact that what is done for children in developing, directing, and vitalizing moral force is worth more than what is done for them in the after years of the longest life. This unsatisfactory condition of ethical influences in public education explains the disposition to maintain parochial and church schools; which has developed marvellously in the last quarter of a century. Those whose heated imaginations see in these schools a covert attack upon the public system of education and finally upon our liberties, are the victims of an irrational fear. We shall see in the future an extension of private and denominational schools, unless we can successfully solve the momentous question of how to make our public schools thoroughly religious without making them offensively sectarian. . . . In the third place, Organized Religion urges as a valid claim upon the allegiance of Society that it is distinctly on the side of weakness, ignorance and innocence. As from the churches in the past proceeded the influence which penetrated the public conscience and the public heart, so to-day the strength of Society's compassion, generosity and gentleness is most largely recruited from the life of the churches. Because they are the chief, though not the only, producers of the compassionate sympathy which works miracles of social healing and social progress, no one who believes that society ought to be and will be something better and more beautiful than a chaos of warring individuals, classes and aims, will refuse to give these imperfect, unsatisfactory, yet always spiritually fruitful organizations, called churches, the allegiance which their demonstrated value to society warrants them to claim. . . . In these last eager years we hear much of the duty of Religion towards the 'lapsed masses' of our great cities, the 'pagans' of our rural communities. The mission to these is energetically presented with varying results; and the churches have awakened to the peril of enormous aggregations of people, who have practically abandoned Organ-

ized Religion. One prays that they may never relax their heroic efforts, and that every organization which seeks to draw men into the cleansing currents of civic righteousness and religious faith may never die. But after all the most significant portent in the religious firmament to-day is the abstention from Organized Religion of so many people, in whom culture, education and refinement are in admissible evidence, and to whom righteousness enough for social safety is dear. But Organized Religion will never be content, — ought not to be, — with the allegiance of those who are the weakest members of society; she longs for the support and loyalty of her best and noblest sons. Let the churches stand convicted of imperfection, like our government, our city, our education, our society; but let them also be generously recognized as the chief producers of the human faith, the civic righteousness and the social compassion, which are the sunlight of our civilization."

I have thus endeavored, as best I could, to allow the man to paint for us his own portrait; and I will not mar the outlines by any additional touches of my own.

Dr. Donald was elected a member of this Society at the meeting of May 10, 1900. He greatly enjoyed his attendance at our meetings, making it a point to be present whenever it was possible; although he never contributed to our *Proceedings*, or served upon the Council or on any Committee.

His last illness was long and painful. For some nine months he lingered, not without hopes of recovery, and at times in great depression. The end came on August 6, 1904, in his summer home at Ipswich, Massachusetts, in his fifty-seventh year.

Dr. Donald was married, April 25, 1876, to Cornelia, daughter of Wellington Clapp, of New York city, who survives him with two of their five children.

Funeral services were held at Trinity Church, Boston, on August 9, and his body was laid to rest at Trinity Cemetery, Washington Heights, New York city.

In 1905 a memorial was erected to his memory in the south transept of Trinity Church, composed of a *bas-relief* portrait in Carrara marble, inserted in a canopied structure of Scotch brownstone, with side columns of variegated Italian marble.

Chiselled across the base of the tablet are the words, "I am the King's Cupbearer." This was the text used by the late Rev. Dr. William R. Huntington, Rector of Grace Church, New York city, for the memorial sermon to Dr. Donald, preached in Trinity Church on November 20, 1904. Below the tablet these words are cut in the base:

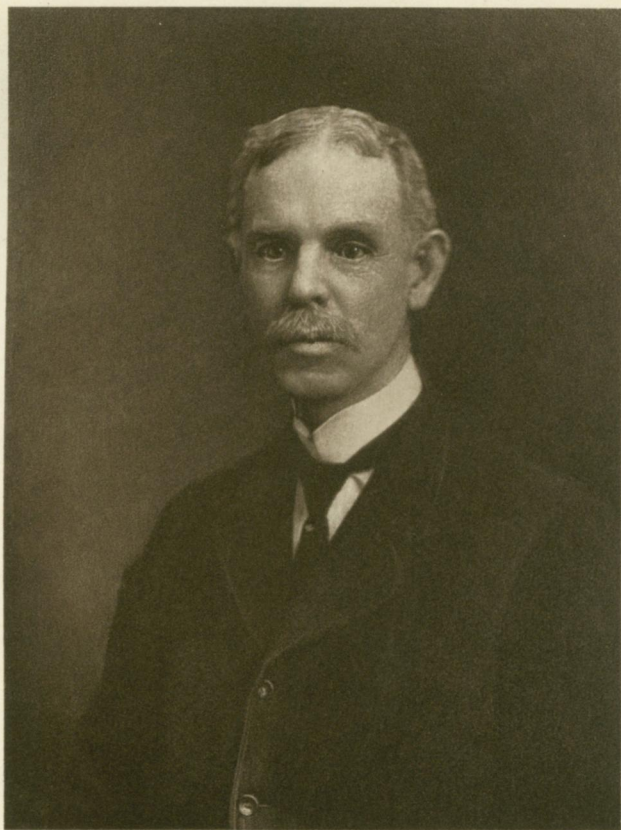
"To the glory of God and in loving memory of Elijah Winchester Donald, D.D., LL.D., Rector of this parish from October twenty-fourth, 1892, to August sixth, 1904."

I will conclude by quoting the generous tribute paid to him by a parishioner:

His great, broad charity, in truth and might
With his firm courage, dared to rise and call
All souls the children of his Father, — all
Who followed Christ were Christians in his sight.

Loving his Church with loyal, fearless love,
He yet would keep her free from narrow ways,
Which sought to dwarf her glorious triumph days,
And hinder her high calling from above.

So he flung wide the doors to all who came
And gave his life to make straight paths for God.



Morton Dexter

MEMOIR
OF
REV. MORTON DEXTER
By FRANKLIN BOWDITCH DEXTER

MORTON DEXTER, the only son of the Rev. Dr. Henry Martyn Dexter, a member of this Society from 1871 to 1890, and of Emeline Augusta (Palmer) Dexter, was born in Manchester, New Hampshire, where his father was pastor of the Second Congregational Church, on July 12, 1846.

He traced his descent from John Alden, George Morton, Degory Priest, and William Palmer, among others of the early Plymouth Pilgrims, and from Thomas Dexter, who settled at Lynn in 1630.

In his infancy his father came to Boston as the pastor of the Pine Street Congregational Church (afterwards the Berkeley Temple), and in 1854 the family residence was removed to Roxbury, where Morton was prepared for college in the Roxbury Latin School.

He entered Yale, his father's college, in 1863, and received his bachelor's degree in 1867, maintaining throughout a creditable standing, and graduating among the first third of his class in scholarship. In his junior year he won the *Yale Literary Magazine's* prize medal for an essay on Sydney Smith.

In the autumn of 1867 he entered the Theological Seminary at Andover; and after the completion in 1870 of the regular course there, he travelled in Europe and the East for two years.

On April 30, 1873, he was ordained and installed as the first regular pastor of the Union Congregational Church in Taunton, which had been organized five years before in one of the suburbs of that city (Whittenton). He visited Europe

again in the summer of 1876 and also in the summer of 1878.

In November, 1878, he resigned his pastoral charge, and removed to Boston, to enter the editorial office of *The Congregationalist*, and to be in close association with his father, who had long been connected with that paper as editor and proprietor. In making this change he was far from surrendering the ideals which had led him into the ministry; and he was undoubtedly right in the conviction that as a journalist he would have opportunity for as conscientious and as useful service as in the pastorate. Nor did he wholly lay aside the ministerial office; down to the last year of his life he took occasional pulpit duty with acceptance.

His work on *The Congregationalist* was at first general, but afterwards principally that of the literary editor; and he gave himself to this field with cordial devotion, manifesting and developing an excellent literary taste. At the same time his unusual versatility should be noticed, which enabled him to carry on, in case of necessity, almost any or all departments of the paper with facility and success.

He was married in Taunton on June 9, 1881, to Miss Emily Loud Sanford, a daughter of the Hon. John E. Sanford, who was a member of this Society from 1884 to his death in 1907.

By the death of his father in November, 1890, Mr. Dexter became also a proprietor of *The Congregationalist*; and he remained at his post in the office until the property was acquired by the Congregational Sunday School and Publishing Society in 1901. When thus released from stated occupation, he had devoted the larger portion of his active life to exhaustive and conscientious editorial labor.

A new interest had in the meantime absorbed much of his leisure, and was henceforth to be a controlling purpose. His father had left incomplete at his death an elaborate study on the England and Holland of the Pilgrims; and the promptings of filial duty led the son to assume the responsibility of completing this work, which in the result involved the devotion to it of his spare time for fifteen years and the rewriting of his father's entire manuscript.

The first fruit of this period of labor was a book for young

people, called *The Story of the Pilgrims*, published in 1894, which had a successful sale. His election to this Society in 1895 may be described as another outcome of his new line of study; and later incidental by-products were the papers contributed to our *Proceedings* on *Alleged Facts as to the Pilgrims*, in 1895, and *The Members of the Pilgrim Company in Leyden*, in 1903.

He was active, also, in the behalf of other kindred societies, and especially in that of the Mayflower Descendants, serving for two years (1902-1904) as the Governor of the Massachusetts Society, and furnishing several valuable communications to their publications.

He made frequent and prolonged visits to Europe for the re-investigation and verification of the facts on which his father's unfinished manuscript was based; and the volume, when it appeared in the autumn of 1905, was not only an adequate presentation of its theme, but a striking tribute to the author's patient and accurate habits of historical research, as well as to his devotion to his father's memory. As one who had carefully read Dr. Dexter's unrevised and incomplete manuscript, the present writer can bear witness that the work as published was in fact substantially new, based indeed on the original draft, but recast in a less cumbrous form and made into a homogeneous whole; yet the changes wrought were thoroughly in the spirit of the original plan.

Mr. Dexter was elected a Resident Member of this Society in March, 1895. He served for three years (1898-1901) as a member of the Council, and on one occasion (1902) on the committee to examine the library. He was also at the time of his death one of the Committee on the publication of the Bradford papers.

Besides the two papers in our *Proceedings* which are mentioned above, he presented memoirs of Edward Griffin Porter (1901) and of his father-in-law, John Elliot Sanford (1909); and was otherwise always a useful and interested participant in our meetings.

He was the efficient secretary and treasurer of the Committee of the National Council of the Congregational Churches of the United States, which placed a memorial tablet in bronze to John Robinson in Leyden, dedicated in July, 1891.

His health had been declining for several months; and on returning from a short European visit in June, 1910, he went to Edgartown, on Martha's Vineyard, where he had often found recreation. He died there suddenly on October 29, in his sixty-fifth year, and was buried in Forest Hills Cemetery on November 2.

His wife survives him, with their two daughters.